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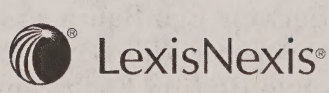

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TITLE 15

NATURAL RESOURCES AND ECONOMIC DEVELOPMENT

(CHAPTERS 1-39 IN VOLUME 13A)

SUBTITLE 4. WILDLIFE RESOURCES

SUBTITLE 5. MINERAL RESOURCES GENERALLY

SUBTITLE 6. OIL, GAS, AND BRINE

SUBTITLE 4. WILDLIFE RESOURCES

CHAPTER 41

ADMINISTRATION AND ENFORCEMENT OF WILDLIFE REGULATIONS

Subchapter 1 — Arkansas State Game and Fish Commission

Effective Dates. Acts 2010, No. 162, § 9: July 1, 2010. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2010 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2010 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2010."

Acts 2013, No. 1027, § 13: July 1, 2013. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2013 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2013 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2013."

Acts 2017, No. 555, § 8: July 1, 2017. Emergency clause provided: "It is found and determined by the General Assembly that this act amends the investment and transfer authority of the Treasurer of State; that this act affects the ability of the Treasurer of State to invest and transfer state funds; and that this act should become effective as soon as possible to allow for implementation of the new provisions to benefit the State of Arkansas. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2017."

Acts 2019, No. 717, § 13: July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2019 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2019 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2019".

15-41-110. Interest earned on game and fish funds.

(a) The Treasurer of State shall on the second business day that the State Treasury is open after the twenty-fifth day of the month compute the balance of the Game Protection Fund or any other funds administered by the Arkansas State Game and Fish Commission during the preceding month. The Treasurer of State shall transfer on that day to the Game Protection Fund interest on the balances to be computed as authorized under § 19-3-518(d)(4).

(b) All interest earned on the Arkansas State Game and Fish Commission funds shall be classified as special revenues and, after deducting three percent (3%) for credit to the Constitutional Officers Fund and State Central Services Fund, the Treasurer of State shall credit the remaining interest earned to the Game Protection Fund.

History. Acts 1983, No. 327, §§ 1, 2; A.S.A. 1947, §§ 47-129.1, 47-129.2; Acts 2017, No. 555, § 1.

Amendments. The 2017 amendment, in (a), substituted "second business day that the State Treasury is open after the twenty-fifth day of the month compute the balance" for "first day of business of the month compute the average daily balance" and substituted "balances to be computed as authorized under § 19-3-518(d)(4)" for "average daily balances to be computed at a rate equivalent to the average rate of interest earned on all State Treasury funds invested".

15-41-118. Agreements to hold and save United States free from damages.

(a)(1) Except as provided in subdivision (a)(2) of this section, the Arkansas State Game and Fish Commission is authorized to agree to hold and save the United States free from damages due to the design, construction, operation, maintenance, repair, replacement, or rehabilitation of:

(A) Projects for water resource development, wildlife conservation, or other purposes; and

(B) Any state-sponsored or locally sponsored project-related betterments.

(2) Subdivision (a)(1) of this section shall not apply to damages due to the fault or negligence of the United States or its contractors.

(b) Subsection (a) of this section does not:

(1) Obligate the General Assembly to provide future appropriations; or

(2) Abrogate the provisions of Arkansas Constitution, Article 5, § 29.

History. Acts 2010, No. 162, § 7.

15-41-119. Representative authority for governmental cooperation for wildlife purposes.

(a) The Arkansas State Game and Fish Commission may represent the state in matters pertaining to cooperation with other states and the United States Government for wildlife conservation, management, and

regulation purposes and may enter into compacts, including without limitation the Interstate Wildlife Violator Compact, with other states to provide for reciprocal enforcement of hunting, fishing, trapping, and other wildlife laws of member states.

(b)(1) The Director of the Arkansas State Game and Fish Commission shall file an annual report with the Legislative Council itemizing and summarizing all compacts entered into under this section.

(2) The annual report shall list with respect to each compact:

(A) A brief statement of the purposes of the compact;

(B) The amount of funds to be expended under the compact; and

(C) Any additional information that enables the members of the Legislative Council to determine the nature and purposes of the compact.

History. Acts 2013, No. 1349, § 1.

15-41-120. Legislative findings and intent — Reports.

(a) The General Assembly finds that:

(1) The natural resources of Arkansas should be protected and restored as needed; and

(2) When the Arkansas State Game and Fish Commission receives damages from a lawsuit as the result of damage sustained by property of the commission, the commission's primary use of the funds received as damages should be to benefit the property that was the subject of the litigation.

(b) It is the intent of the General Assembly that when the commission receives damages from a lawsuit as the result of damage sustained by property of the commission, the commission should use the funds received as damages to benefit the property that was the subject of the litigation.

(c) The commission shall report to the Game and Fish/State Police Subcommittee of the Legislative Council annually, at the request of the Chair of the Game and Fish/State Police Subcommittee of the Legislative Council, or at the request of the cochairs of the Legislative Council the following information with respect to any lawsuit in which the commission is a plaintiff or seeks damages from a third party:

(1) The status of the lawsuit;

(2) The issues present in the lawsuit;

(3) The relief requested in the lawsuit; and

(4) The commission's plans for using any funds received as damages from the lawsuit.

History. Acts 2013, No. 1027, § 11.

15-41-121. Extra help restrictions.

An employee of the Arkansas State Game and Fish Commission who is employed as extra help may not, in a fiscal year:

(1) Receive an amount to exceed eighty-five percent (85%) of the maximum annual salary for a comparable position under:

(A) The Uniform Classification and Compensation Act, § 21-5-201 et seq., or its successor; or

(B) The appropriation act applicable to the commission for the fiscal year at issue; or

(2) Be employed for a period of time to exceed one thousand eight hundred (1,800) hours.

History. Acts 2019, No. 717, § 8.

15-41-122. Cost-of-living increases and merit pay.

(a) Employees of the Arkansas State Game and Fish Commission may receive cost-of-living and merit pay adjustments at the discretion of the commission.

(b) The commission may develop and establish a merit pay system that shall be reviewed by the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee.

(c) The commission may establish merit payments as either of the following, based on sufficiency of funding:

(1) An increase to an employee's base salary; or

(2) A lump-sum payment.

(d) Commission employees shall be evaluated using an instrument developed by the commission that incorporates performance evaluation standards.

(e)(1) If cost-of-living or merit pay adjustments are awarded, employees reaching the maximum rate of pay for their respective classifications may receive merit pay or cost-of-living adjustments in a lump-sum payment.

(2) Additional compensation under this section shall not be construed as exceeding the line item maximum for that position classification.

History. Acts 2019, No. 717, § 8.

15-41-123. Compensation differentials.

(a)(1) The Arkansas State Game and Fish Commission may pay a compensation differential under this section to an employee occupying a regularly appropriated position in an amount not to exceed twelve percent (12%) of an employee's base salary.

(2) An employee may be paid more than one (1) compensation differential under this section, provided the cumulative total of any compensation differentials paid under this section shall not exceed twenty-five percent (25%) of the employee's base salary.

(b) A compensation differential shall be reviewed by the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee.

(c) The commission shall demonstrate the need for a compensation differential and submit a plan to the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, identifying the position or classification eligible for the differential.

(d) A compensation differential authorized under this section includes only the following:

(1) A shift differential;

(2) A hazardous-duty differential;

(3) A certification differential; and

(4) A second-language differential.

(e) An employee who receives additional compensation under this section who moves into a position that is not authorized to receive the compensation differential shall have the compensation differential removed from his or her salary.

(f) If granting additional compensation under this section has the effect of exceeding the line item maximum assigned to the employee's position or classification, the additional compensation shall not be construed as exceeding the line item maximum for that position or classification.

History. Acts 2019, No. 717, § 8.

15-41-124. Arkansas Hunters Feeding the Hungry, Inc. program.

(a) The Arkansas Hunters Feeding the Hungry, Inc. program is designed to:

(1) Share the harvest of an abundant resource with Arkansans who are in need of food;

(2) Partner with the Arkansas State Game and Fish Commission to provide a solution for a healthy, balanced deer herd;

(3) Provide a much-needed free, low-fat, high-protein food source to agencies and organizations that provide meals across Arkansas; and

(4) Create a provider purpose for hunters who participate in the program, which allows them to give back and share with others.

(b) The commission may establish a check-off or other appropriate method by which to raise revenue for support of the program.

(c) The intent of this section is to encourage the commission to examine opportunities available to provide support for the program.

History. Acts 2019, No. 717, § 8.

15-41-125. Overtime payments.

(a)(1) If approved by the Director of the Arkansas State Game and Fish Commission, the Arkansas State Game and Fish Commission may make overtime payments to wildlife officers or other employees who are currently assigned or may be assigned by the director or his or her designee to special law enforcement task forces, special operations, or other special programs reimbursable to the commission by federal or local authorities.

(2) Overtime payments under subdivision (a)(1) of this section shall be made from funds and appropriations provided for overtime payments.

(b) Overtime payments under this section shall be:

(1) Processed through the state accounting system; and

(2) In addition to the regular salaries and benefits accruing to the employees eligible for overtime payments under this section.

History. Acts 2019, No. 717, § 8.

Subchapter 2 — Enforcement Generally

SECTION.

15-41-203. Authorized searches.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Ben Honaker, Note: We've Got Ourselves in a Pickle: The Supreme Court of Arkansas's Recent Expansion of Fourth Amendment Rights May Have Unintended Consequences, Pickle v. State, 2015 Ark. 286, 39 U. Ark. Little Rock L. Rev. 299 (2017).

15-41-209. Fines, fees, and costs.

(a) All fines assessed against and collected from persons convicted for infractions of the state laws protecting game, fish, fur-bearing animals, or fresh water mussels shall be paid to the county treasurer or the district court clerk of the county in which the fine is assessed and forwarded, as provided, to the Arkansas State Game and Fish Commission.

(b)(1) The county treasurer or district court clerk shall give his or her receipt to a person paying a fine or to an officer of the court making settlement of fines collected.

(2)(A) At the end of each month, county treasurers or district court clerks shall file a report and forward all fines collected under this chapter to the Arkansas State Game and Fish Commission.

(B) The report, filed on forms provided by the Arkansas State Game and Fish Commission, shall include:

(i) The name of each defendant;

(ii) The court case number;

(iii) The name of the arresting officer; and

(iv) The amount of the fine.

(c) Upon receipt of the fines described in subsection (b) of this section, the Arkansas State Game and Fish Commission shall deposit the fines with the Treasurer of State, who shall deposit the fines as special revenues into the Game Protection Fund.

(d) A portion of the fines deposited as special revenues into the fund may be expended by the Arkansas State Game and Fish Commission in the form of grants issued to the Rural Services Division of the Arkansas Economic Development Commission for fish and wildlife conservation education and other purposes consistent with Arkansas Constitution, Amendment 35.

(e)(1) The Arkansas State Game and Fish Commission shall file a written report no later than October 1 of each even-numbered year with the Legislative Council and the Joint Budget Committee indicating the amount of fines deposited into the fund during the prior two (2) fiscal years and the amount of those funds transferred to the division under subsection (d) of this section.

(2) If all of the fines were not transferred to the division, the Arkansas State Game and Fish Commission shall include in its report an explanation as to why all fines were not transferred.

History. Acts 1927, No. 160, §§ 2, 14; Pope's Dig., §§ 5852, 5918; A.S.A. 1947, §§ 47-121, 47-522; Acts 1995, No. 232, § 7; 2003, No. 799, § 1; 2015, No. 371, § 4.

A.C.R.C. Notes. Acts 2015, No. 371, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) Conservation of the fish and wildlife of the state is essential to the economy and ecology of our state;

"(2) Educating youth regarding conservation issues is an important step in developing a knowledgeable citizenry that appreciates the benefits to the state and its residents of conserving fish and wildlife;

"(3) A significant portion of the state's conservation efforts take place in rural areas, but people from all over the state travel to these rural areas to interact with the fish and wildlife of the state; and

"(4) The Department of Rural Services is uniquely qualified to administer a program that brings together conservation issues and the needs of rural areas.

"(b) The General Assembly intends for this act to transfer the administration of the fish and wildlife conservation education program from the Department of Education to the Department of Rural Services."

Amendments. The 2015 amendment substituted "district court" for "municipal court" throughout (a) and (b); substituted "each month" for "each four (4) months, in April, August, and December" in (b)(2)(A); in (c), substituted "Upon receipt of the fines described in subsection (b) of this section, the commission shall deposit the fines" for "The commission shall, upon receipt thereof, deposit the same" and substituted "fines" for "moneys" preceding "as special"; in (d), substituted "A portion of the fines" for "All or any portion of the fine moneys" and substituted "Department of Rural Services" for "Department of Education"; and, in (e)(2), substituted the first occurrence of "fines" for "fine moneys" and the second occurrence for "funds."

15-41-210. Electronic proof of hunter education certificate — Definition.

(a) As used in this section, "acceptable electronic format" means an electronic image produced on the person's own cellular phone or other type of portable electronic device that displays all of the information on the hunter education certificate as clearly as the paper hunter education certificate.

(b) When a law or regulation of this state requires a person to carry and display upon request a hunter education certificate, an electronic

copy of the hunter education certificate in an acceptable electronic format is sufficient to establish compliance.

(c) The presentment of proof of a hunter education certificate in an acceptable electronic format does not:

(1) Authorize a search of any other content of an electronic device without a search warrant or probable cause; or

(2) Expand or restrict the authority of a law enforcement officer to conduct a search or investigation.

History. Acts 2013, No. 472, § 1.

Publisher's Notes. Former § 15-41-210, concerning the penalty for violations not specifically named in a 1917 law, was repealed by Acts 1999, No. 1557, § 15. The section was derived from the following sources: Acts 1917, No. 133, § 14; C. & M. Dig., § 4806; Pope's Dig., § 5907; A.S.A. 1947, § 47-521.

CHAPTER 42

LICENSES

SUBCHAPTER.

1. General Provisions.

Subchapter 1 — General Provisions

15-42-101. Penalty for hunting or fishing without license.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Ben Honaker, Note: We've Got Ourselves in a Pickle: The Supreme Court of Arkansas's Recent Expansion of Fourth Amendment Rights May Have Unintended Consequences, Pickle v. State, 2015 Ark. 286, 39 U. Ark. Little Rock L. Rev. 299 (2017).

15-42-104. Hunting and fishing licenses for residents — Special fees.

(a)(1) The maximum fee for the annual resident basic hunting license for any resident of the State of Arkansas who is sixteen (16) years of age or older for the privilege of taking small game and the taking of one (1) deer by the use of a modern center-fire firearm shall be as provided by the regulations and within the bag limits promulgated by the Arkansas State Game and Fish Commission but shall not exceed eleven dollars and fifty cents ($11.50) each until July 1, 1997, when the maximum fee shall revert to ten dollars and fifty cents ($10.50).

(2) The maximum fee for the annual resident sportsman hunting license for any resident of the State of Arkansas who is sixteen (16) years of age or older for the privilege of taking three (3) deer and all other game by any method of taking shall be as provided by the regulations and within the bag limits promulgated by the commission but shall not exceed twenty-six dollars ($26.00) each until July 1, 1997, when the maximum fee shall revert to twenty-five dollars ($25.00) each.

(3) In addition to the annual resident basic and sportsman hunting license fees authorized in this subsection, the commission by regulation may provide that any resident of this state who is sixteen (16) years of age or older be required:

(A) For the privilege of hunting migratory birds in this state, to obtain a special permit and pay a special annual fee not to exceed seven dollars ($7.00) each;

(B) For the privilege of taking a bonus deer in addition to the deer authorized with the basic hunting license and the sportsman hunting license, to obtain a special permit and pay a special fee not to exceed ten dollars ($10.00) each; and

(C) For the privilege of hunting elk in this state, to obtain a special permit and pay a special annual fee not to exceed thirty-five dollars ($35.00) each.

(4) Nothing contained herein is intended to restrict the authority of the commission to charge any resident of the state an additional fee solely for the purpose of entering upon and hunting upon any land owned or leased by the commission.

(b)(1) The maximum fee for the annual resident fishing license for any resident of the State of Arkansas who is sixteen (16) years of age or older shall be as provided by the regulations promulgated by the commission but shall not exceed eleven dollars and fifty cents ($11.50) each until July 1, 1997, when the maximum fee shall revert to ten dollars and fifty cents ($10.50) each.

(2) In addition to the annual resident fishing license fee authorized in this subsection, the commission by regulation may provide that any resident of this state sixteen (16) years of age or older be required for the privilege of fishing for trout in this state to obtain a special permit and pay a special annual fee not to exceed ten dollars ($10.00).

(3) In lieu of the annual resident fishing license fee authorized in this subsection, the commission by regulation may provide that any resident of this state sixteen (16) years of age or older be authorized to purchase a three-day-trip fishing license for a fee not to exceed seven dollars and fifty cents ($7.50) each until July 1, 1997, when the maximum fee shall revert to six dollars and fifty cents ($6.50) each.

(c) The maximum fee for the annual resident combination sportsman hunting and fishing license for any resident of the State of Arkansas who is sixteen (16) years of age or older for all hunting and fishing privileges except those covered by the migratory bird and trout permits shall be as provided by the regulations and within the bag limits as promulgated by the commission but shall not exceed thirty-seven

dollars and fifty cents ($37.50) each until July 1, 1997, when the maximum fee shall revert to thirty-five dollars and fifty cents ($35.50).

(d)(1) The commission:

(A) Shall provide for the issuance of a lifetime hunting and fishing license, with an optional lifetime trout stamp and lifetime state duck stamp, to a resident of this state who is:

(i) Sixty-five (65) years of age or older for a one-time fee of thirty-five dollars and fifty cents ($35.50);

(ii) Any age for a one-time fee of one thousand dollars ($1,000); or

(iii) Sixty (60) years of age or older who is a regular or nonregular retiree of the armed services of the United States for a one-time fee of thirty-five dollars and fifty cents ($35.50); and

(B) May provide for the issuance of:

(i) A lifetime hunting-only license or a lifetime fishing-only license for a fee that shall not exceed the fee that the resident would be charged otherwise for the issuance of a lifetime license under subdivision (d)(1)(A) of this section;

(ii) An annual resident sportsman hunting license to a resident of the state who is sixty-five (65) years of age or older for a fee not to exceed three dollars and fifty cents ($3.50);

(iii) An annual resident fishing license to a resident of the state who is sixty-five (65) years of age or older for a fee not to exceed three dollars and fifty cents ($3.50); and

(iv) An annual resident combination hunting and fishing license to a resident of the state who is sixty-five (65) years of age or older for a fee not to exceed four dollars and fifty cents ($4.50).

(2) The commission shall offer a resident issued a lifetime hunting and fishing license under subdivision (d)(1)(A) of this section, a hunting-only license or a fishing-only license under subdivision (d)(1)(B) of this section, or a hunting license or a fishing license issued under § 15-42-128:

(A) A lifetime trout stamp for a one-time fee of ten dollars ($10.00);

(B) A lifetime state duck stamp for a one-time fee of seven dollars ($7.00); or

(C) Both a lifetime trout stamp and a lifetime state duck stamp for a one-time fee of seventeen dollars ($17.00).

(3) The commission:

(A) Shall provide for the issuance of a three-year disabled hunting and fishing license to a resident of this state who is totally disabled for a fee of thirty-five dollars and fifty cents ($35.50); and

(B) May provide for the issuance of a hunting-only license or a fishing-only license to a resident of this state who is totally disabled for a fee that shall not exceed thirty-five dollars and fifty cents ($35.50).

(e) For this section, the commission may promulgate rules that:

(1) Define "resident" and "totally disabled"; and

(2) Govern the sale and use of each license, permit, or stamp issued under this section.

History. Acts 1987, No. 910, §§ 1-4; 1987, No. 939, § 18; 1987 (1st Ex. Sess.), No. 1, §§ 2, 3; 1989, No. 49, § 1; 1989, No. 219, § 1; 1995, No. 369, § 1; 1999, No. 987, § 1; 2003, No. 428, § 1; 2009, No. 623, § 1; 2011, No. 302, § 1; 2013, No. 1253, §§ 1-3; 2015, No. 368, § 1; 2019, No. 886, §§ 2, 3.

A.C.R.C. Notes. Acts 2019, No. 886, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) Trout fishing in Arkansas annually generates an estimated one hundred eighty million dollars ($180,000,000);

"(2) Trout fishing brings in revenue to the state through tourism, which is Arkansas's second leading industry;

"(3) Trout fishing supports Arkansans who work in the multi-million dollar tourism industry and Arkansans who are avid trout anglers;

"(4) Arkansas anglers and nonresident anglers trust the Arkansas State Game and Fish Commission to provide quality trout fishing opportunities;

"(5) Trout do not naturally reproduce well in most Arkansas waters and need to be grown and stocked with the help of hatcheries and Arkansas State Game and Fish Commission staff;

"(6) Hatchery renovations are needed in order to maintain trout production levels at hatcheries in the state and to support Arkansas's trout-fishing industry; and

"(7) An increase in funding is necessary for hatchery renovations, trout management, and improvements in fishing opportunities in the state.

"(b) It is the intent of the General Assembly that an increase in the special annual fee for a trout special permit will provide the necessary funding for hatchery renovations, trout management, and improvements in fishing opportunities in the state".

Amendments. The 2015 amendment deleted (d)(1)(A)(ii) (previously repealed) and redesignated (d)(1)(A)(iii)-(iv) as (d)(1)(A)(ii)-(iii); redesignated (d)(1)(B) as (d)(1)(B) and (d)(1)(B)(i); and added (d)(1)(B)(ii)-(iv).

The 2019 amendment substituted "ten dollars ($10.00)" for "five dollars ($5.00)" in (b)(2) and (d)(2)(A); and substituted "seventeen dollars ($17.00)" for "twelve dollars ($12.00)" in (d)(2)(C).

15-42-107. Nonresident fishing license generally.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes Prohibiting, Limiting, or Regulating Fishing or Hunting in State by Nonresidents. 31 A.L.R.6th 523.

15-42-108. Nonresident three-day fishing license.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes Prohibiting, Limiting, or Regulating Fishing or Hunting in State by Nonresidents. 31 A.L.R.6th 523.

15-42-122. Limitation on issuance of hunting or fishing licenses in neighboring states.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes Prohibiting, Limiting, or Regulating Fishing or Hunting in State by Nonresidents. 31 A.L.R.6th 523.

15-42-126. Reciprocity agreements — Nonresidents over 65.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes Prohibiting, Limiting, or Regulating Fishing or Hunting in State by Nonresidents. 31 A.L.R.6th 523.

15-42-127. Implied consent.

(a)(1) Subject to the provisions of subsection (c) of this section, any person who purchases a hunting license for use in the State of Arkansas or engages in hunting privileges in this state shall be deemed to have given consent to a chemical test or tests of his or her blood, breath, saliva, or urine for the purpose of determining the alcohol concentration or controlled substance content of his or her blood, breath, saliva, or urine if the person is involved in a shooting accident while hunting.

(2) Any person who is dead, unconscious, or otherwise in a condition rendering the person incapable of refusal to submit to a chemical test of his or her blood, breath, saliva, or urine shall be deemed not to have withdrawn the consent provided by subdivision (a)(1) of this section, and the chemical test may be administered subject to the provisions of subsection (c) of this section.

(3)(A) When a person who is hunting in this state is involved in a shooting accident resulting in loss of human life or serious bodily injury, a law enforcement officer shall request and the person or persons shall submit to a chemical test or tests of the person's blood, breath, saliva, or urine for the purpose of determining the alcohol concentration or controlled substance content of his or her blood, breath, saliva, or urine.

(B) The law enforcement officer shall cause the chemical test or tests to be administered to the person or persons involved in the shooting accident, including the person injured by the shooting and the person who caused the injury by shooting another person.

(b) If a person who is hunting is involved in a shooting accident resulting in loss of human life or serious bodily injury and the person refuses to submit to a chemical test under this section upon the request of the law enforcement officer, the person shall be guilty of a violation for refusal to submit, and upon conviction:

(1) The court shall levy a fine of not less than two thousand five hundred dollars ($2,500) and not greater than five thousand dollars ($5,000); and

(2) The Arkansas State Game and Fish Commission may suspend or revoke the person's hunting privileges or eligibility to purchase a hunting license for life.

(c)(1) The chemical tests required under this section shall be administered at the direction of a law enforcement officer having reasonable cause to believe the person to have been hunting while under the influence of alcohol or a controlled substance.

(2)(A) The law enforcement agency by which the officer referred to in subdivision (c)(1) of this section is employed shall designate which

chemical tests authorized by this section shall be administered, and the law enforcement agency shall be responsible for paying all expenses incurred in conducting the chemical tests.

(B) If a person tested under this section requests that additional chemical tests be made as authorized in subsection (g) of this section, the cost of the additional chemical tests shall be charged to the person tested.

(C) If any person objects to the taking of his or her blood for a chemical test as authorized by this section, the breath, saliva, or urine of the person may be used for the chemical test.

(d)(1) To be considered valid under the provisions of this section, a chemical test of a person's blood, breath, saliva, or urine must be performed according to methods approved by the State Board of Health or by an individual possessing a valid permit issued by the Department of Health for that purpose.

(2) The department may:

(A) Approve satisfactory techniques or methods for the chemical test of a person's blood, breath, saliva, or urine;

(B) Ascertain the qualifications and competence of individuals to conduct the chemical test; and

(C) Issue permits that shall be subject to termination or revocation at the discretion of the department.

(e)(1) When a person submits to a blood test at the request of a law enforcement officer, blood may be drawn by a physician or by a person acting under the direction and supervision of a physician.

(2) The limitation of subdivision (e)(1) of this section shall not apply to the taking of breath, saliva, or urine specimens.

(3)(A) No person, institution, or office in this state that withdraws blood for the purpose of determining alcohol concentration or controlled substance content of the blood at the request of a law enforcement officer under this section shall be held liable for violating any of the criminal laws of this state in connection with the withdrawal of blood.

(B) A physician, institution, or person acting under the direction or supervision of a physician shall not be held liable in tort for the withdrawal of the blood unless the person or institution is negligent in connection with the withdrawal of blood or the blood is taken over the objections of the subject.

(f) Upon the request of a person who submits to a chemical test at the request of a law enforcement officer under this section, full information concerning the chemical test shall be made available to the person or the person's attorney.

(g)(1) A person tested may have a physician, qualified technician, registered nurse, or other qualified person of his or her own choice administer a complete chemical test in addition to any chemical test administered at the direction of a law enforcement officer.

(2) The law enforcement officer shall advise the person of this right.

(3) If a law enforcement officer refuses or fails to advise the person of this right and to permit and assist the person to obtain the chemical

test, then the results of the chemical test taken at the direction of the law enforcement officer under this section shall not be admissible into evidence.

History. Acts 2005, No. 1983, § 1; 2013, No. 361, § 19.

15-42-128. Lifetime hunting licenses and fishing licenses for resident disabled veterans — Definition.

(a) The General Assembly finds and determines that:

(1) The regulation of hunting and fishing, and the issuance of hunting licenses and fishing licenses, in the state is a primary responsibility of the Arkansas State Game and Fish Commission under Arkansas Constitution, Amendment 35;

(2) Disabled veterans of Arkansas deserve to be recognized and honored for their service and sacrifice in honorably serving the nation and this state;

(3) The establishment and issuance of lifetime hunting licenses and lifetime fishing licenses in this state is a small way to recognize and honor the service of disabled veterans in this state; and

(4) It is the purpose and intent of this section to authorize and encourage the commission to establish and issue lifetime hunting licenses, lifetime fishing licenses, and lifetime combination hunting and fishing licenses for eligible disabled veterans in this state.

(b) The commission may establish for issuance lifetime hunting licenses, lifetime fishing licenses, and lifetime combination hunting and fishing licenses for eligible disabled veterans in this state.

(c) As used in this section, "disabled veteran" means a veteran who is a resident of the state and has been determined by the United States Department of Veterans Affairs to be:

(1) A one-hundred-percent totally and permanently disabled service-connected veteran; or

(2) For purposes of subsection (f) of this section only, a disabled veteran who:

(A) Has a service-connected disability rating of seventy percent (70%) or higher; or

(B) Has a service-connected disability rating of fifty percent (50%) or higher and is a recipient of the Purple Heart medal.

(d) A disabled veteran may obtain a lifetime license to hunt or a lifetime license to fish under this section by:

(1) Applying to the commission;

(2) Furnishing information required by the commission to verify eligibility; and

(3) Paying the following fees:

(A) One dollar and fifty cents ($1.50) for a lifetime hunting license; and

(B) One dollar and fifty cents ($1.50) for a lifetime fishing license.

(e) A lifetime hunting license, lifetime fishing license, or lifetime combination hunting and fishing license issued under this section shall:

(1) Be in the same form and contain the same information as other hunting licenses or fishing licenses issued by the commission;

(2) Contain any other information required by the commission; and

(3) Be plainly stamped either:

(A) "DISABLED VETERAN"; or

(B) "DISABLED VETERAN — PURPLE HEART".

(f) A disabled veteran may obtain a lifetime combination hunting and fishing license, which includes a lifetime trout stamp and a lifetime state duck stamp, under this section by:

(1) Applying to the commission;

(2) Furnishing information required by the commission to verify eligibility; and

(3) Paying a fee of fifty-two dollars and fifty cents ($52.50).

(g) The commission may promulgate rules as necessary to implement this section.

History. Acts 2013, No. 1253, § 4; 2019, No. 729, § 1.

Amendments. The 2019 amendment inserted "lifetime combination hunting and fishing licenses" in (a)(4) and (b); rewrote (c); substituted "Paying" for "Payment of" in (d)(3); rewrote the introductory language of (e); inserted (f); rewrote and redesignated former (f) as (g); and made stylistic changes.

15-42-129. Resident feral hog depredation permit.

(a) The Arkansas State Game and Fish Commission may issue a resident depredation permit for hunting and trapping feral hogs.

(b) A person may obtain a depredation permit issued under this section by:

(1) Applying to the commission; and

(2) Furnishing information required by the commission to verify eligibility.

(c) A depredation permit issued under this section shall:

(1) Be in the same form and contain the same information as other depredation permits issued by the commission; and

(2) Contain any other information required by the commission.

(d) A property owner or tenant shall not be required to obtain a depredation permit issued under this section to hunt or trap feral hogs on the private property owned by the owner or leased by the tenant.

(e) The commission may promulgate rules to implement this section.

History. Acts 2015, No. 723, § 4.

15-42-130. Anatomical gift option for online license purchases.

(a) The Arkansas State Game and Fish Commission may allow a resident who applies for a license to hunt or fish through the commission's online sales system to indicate a desire to make an anatomical gift on his or her online application.

(b) If the commission authorizes an anatomical gift option through its online sales system, the online sales system shall contain state-

ments sufficient to comply with the Revised Arkansas Anatomical Gift Act, § 20-17-1201 et seq., so that execution of the application makes the anatomical gift effective for a resident indicating a desire to make an anatomical gift.

(c) The commission may:

(1) Provide a link on its website to a federally designated organ procurement organization website that contains information describing:

(A) Arkansas laws regarding anatomical gifts;

(B) The need for and benefits of anatomical gifts; and

(C) The legal implications of making an anatomical gift, including the law governing revocation of anatomical gifts;

(2) Provide education to Arkansas residents who hunt and fish by distributing information regarding anatomical gifts and how to register to make an anatomical gift;

(3) Distribute information regarding an anatomical gift through print and digital communications targeting Arkansas residents who hunt and fish; and

(4) Prepare the information regarding an anatomical gift in conjunction with an organ procurement organization created, organized, and existing under the laws of the state.

(d)(1) If the commission authorizes an anatomical gift option through the commission's online sales system, the commission is not required to keep the physical record of the donor's application after issuing the license in order for the anatomical gift indication to be valid.

(2)(A) However, the commission shall provide information required under § 20-17-618 for an individual who has indicated consent on an online sales system transaction to share private data for the record of registered donors.

(B) The information submitted under subdivision (d)(2)(A) of this section is classified as private information and is required to be shared only as provided in § 20-17-618.

History. Acts 2019, No. 793, § 2.

A.C.R.C. Notes. Acts 2019, No. 793, § 1, provided: "Legislative intent. The General Assembly intends by this act is to authorize and encourage the Arkansas State Game and Fish Commission to establish an anatomical gift program through the commission's online sales system".

CHAPTER 43

HUNTING AND FISHING REGULATIONS

Subchapter 1 — General Provisions

15-43-104. Game and fish as state property.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Ben Honaker, Note: We've Got Ourselves in a Pickle: The Supreme Court of Arkansas's Recent Expansion of Fourth Amendment Rights May Have Unintended Consequences, Pickle v. State, 2015 Ark. 286, 39 U. Ark. Little Rock L. Rev. 299 (2017).

15-43-105. Prima facie evidence of hunting and fishing.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Ben Honaker, Note: We've Got Ourselves in a Pickle: The Supreme Court of Arkansas's Recent Expansion of Fourth Amendment Rights May Have Unintended Consequences, Pickle v. State, 2015 Ark. 286, 39 U. Ark. Little Rock L. Rev. 299 (2017).

CHAPTER 45

WILDLIFE PRESERVATION

SUBCHAPTER.

Subchapter 2 — Game and Fish Refuges

SECTION.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

15-45-211. State parks as bird sanctuaries.

(a) The entire areas embraced within the limits of any and all state parks of this state are designated and established as bird sanctuaries.

(b) It shall be unlawful for any person to trap, hunt, shoot, or attempt to shoot or molest in any manner any bird or wild fowl or to rob birds' nests or wild fowl's nests in these areas. However, if starlings or similar birds are found to be congregating in such numbers in a particular locality as in the opinion of the Department of Health constitutes a nuisance or a menace to health or property, then officials of the department, after giving three (3) days' notice of the time and place of the meeting, shall meet with representatives of the Audubon Society, a bird club, garden club, or humane society, or with as many of those clubs as are found to exist in the state, to discuss possible solutions to the problem. If, as a result of the meeting, no satisfactory alternative is found to abate the nuisance, then the birds may be destroyed in such numbers and in such manner as is deemed advisable by the department under the supervision of the Director of the Division of Arkansas State Police.

(c) Any person violating any provision of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one hundred dollars ($100) or by imprisonment not exceeding thirty (30) days.

History. Acts 1957, No. 223, §§ 1-3; A.S.A. 1947, §§ 47-706 — 47-708; Acts 2019, No. 910, § 5925.

Amendments. The 2019 amendment, in (b), substituted "department" for "Department of Health" twice, and substituted "Director of the Division of Arkansas State Police" for "Director of the Department of Arkansas State Police".

Subchapter 3 — Nongame Preservation

SECTION.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

15-45-302. Nongame Preservation Committee.

(a) The Nongame Preservation Committee will consist of five (5) members and will include the following representatives:

(1) The Director of the Arkansas State Game and Fish Commission;

(2) The Director of the State Parks Division; and

(3) The Director of the Arkansas Natural Heritage Commission.

(b) The remaining two (2) members shall:

(1) Be appointed by the Governor subject to confirmation by the Senate after the Governor consults with private conservation organizations from within the state; and

(2) Serve terms of three (3) years.

History. Acts 1983, No. 475, § 3; A.S.A. 1947, § 47-902; Acts 2015, No. 1100, § 18; 2017, No. 374, § 42; 2019, No. 910, § 5667.

Amendments. The 2015 amendment, in (b), inserted "subject to confirmation by the Senate" in the first sentence and rewrote the second sentence.

The 2017 amendment redesignated former (b) as the present introductory language of (b) and (b)(1); substituted "shall:" for "will be" in the introductory language of (b); in (b)(1), added "Be", substituted "after the Governor consults with" for "for three-year terms. The Governor shall appoint two (2) members after consulting", and added "; and"; and added (b)(2).

The 2019 amendment deleted "of the Department of Parks and Tourism" following "State Parks Division" in (a)(2).

CHAPTER 47

WILDLIFE RECREATION FACILITIES

SUBCHAPTER.

1. Wildlife Recreation Facilities Pilot Program.

Subchapter 1 — Wildlife Recreation Facilities Pilot Program

SECTION.

15-47-103. Wildlife Recreation Facilities Pilot Program.

SECTION.

15-47-104. Funding.

Effective Dates. Acts 2015 (1st Ex. Sess.), Nos. 7 and 8, § 153: July 1, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Building Authority, the Arkansas Science and Technology Authority, the Department of Rural Services, and the Division of Land Surveys of the Arkansas Agriculture Department are inefficiently structured; that this inefficient structuring causes an excessive and unnecessary cost to the taxpayers of the this state; and that this act is essential to alleviating that financial burden. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2015."

15-47-103. Wildlife Recreation Facilities Pilot Program.

(a) There is created a program to be known as the "Wildlife Recreation Facilities Pilot Program".

(b) The program shall be developed, implemented, and administered by the Rural Services Division of the Arkansas Economic Development Commission with the assistance of the Arkansas State Game and Fish Commission.

(c) The purpose of the program is to:

(1) Create better access to outdoor wildlife recreational activities for Arkansans;

(2) Attract tourists for the enjoyment and utilization of wildlife sports, including hunting and fishing;

(3) Ignite interest in the wildlife resources and nature appreciation activities of Arkansas; and

(4) Promote economic development in the state through the use and enjoyment of the state's abundant wildlife resources.

(d) The division and the Arkansas State Game and Fish Commission agree to work cooperatively to establish criteria and recommendations for wildlife recreation facilities, including without limitation the development of community ponds, shooting ranges, community fishing, and access areas for fishing for the enjoyment of the wildlife resources of the state by our citizens and visitors to the state who are attracted to Arkansas's abundant wildlife resources.

(e) The division and the Arkansas State Game and Fish Commission agree to develop plans and review the needs and requirements for the construction and development of wildlife recreation facilities under the program.

(f) The division, with the assistance and advice of the Arkansas State Game and Fish Commission, shall establish criteria for the wildlife recreation facilities by the promulgation of rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for the development of wildlife recreation facilities in the program.

History. Acts 2009, No. 687, § 1; 2015 (1st Ex. Sess.), No. 7, § 130; 2015 (1st Ex. Sess.), No. 8, § 130.

Amendments. The 2015 amendment by Acts 2015 (1st Ex. Sess.), Nos. 7 and 8 substituted "Rural Services Division of the Arkansas Economic Development Commission" for "Department of Rural Services and the Arkansas Rural Development Commission" in (b); substituted "The division and the Arkansas State Game and Fish Commission" for "The department and the commission" in (d) and (e); and, in (f), substituted "The division" for "The department" and "Arkansas State Game and Fish Commission" for "commission."

15-47-104. Funding.

(a)(1) The Arkansas State Game and Fish Commission voluntarily agrees to make available an amount not to exceed five hundred thousand dollars ($500,000) for the fiscal year beginning July 1, 2011, and ending June 30, 2012, for the Wildlife Recreation Facilities Pilot Program for the development of wildlife recreation facilities under this

subchapter from moneys that the Arkansas State Game and Fish Commission has received from oil and gas leases in the Fayetteville Shale.

(2) The General Assembly recognizes that the agreement under subdivision (a)(1) of this section does not constitute:

(A) A mandate by the General Assembly;

(B) An appropriation of funds by the General Assembly; or

(C) A waiver or relinquishment by the Arkansas State Game and Fish Commission of the authority vested in the Arkansas State Game and Fish Commission under Arkansas Constitution, Amendment 35.

(3) Before any moneys are distributed under this section, the Arkansas State Game and Fish Commission shall retain the right to approve or disapprove the release of moneys.

(4) Future funding for the program is subject to the review under subdivisions (b)(2) and (3) of this section and shall be determined by and distributed from the availability of royalties from oil and gas leases in the Fayetteville Shale that the Arkansas State Game and Fish Commission receives or from other sources that are not from the Arkansas State Game and Fish Commission.

(b)(1) The Rural Services Division of the Arkansas Economic Development Commission and the Arkansas State Game and Fish Commission agree to execute a memorandum of understanding to delineate each party's participation, obligation, and cooperation in the program sufficient to fulfill the requirements of this section.

(2) The division and the Arkansas State Game and Fish Commission agree to review the memorandum of understanding every two (2) years to evaluate the effectiveness and success of the program and to reexamine the need for moneys to be made available to the division to fund the development of wildlife recreation facilities.

(3) If both the Arkansas State Game and Fish Commission and the division agree that the program meets or exceeds the purpose of the legislation or agree that to discontinue the program would result in an undue disruption of progress, the parties shall reexecute a memorandum of understanding under subdivision (b)(1) of this section.

(c) An agreement for funding in a memorandum of understanding under subdivision (b)(1) of this section and a distribution of money under this subchapter require the final approval of the Arkansas State Game and Fish Commission.

(d) The maximum grant amount for a single project funded under the program is one hundred thousand dollars ($100,000) per year.

History. Acts 2009, No. 687, § 1; 2011, No. 1041, § 7; Acts 2015 (1st Ex. Sess.), No. 7, § 131; 2015 (1st Ex. Sess.), No. 8, § 131.

Amendments. The 2015 amendment by Acts 2015 (1st Ex. Sess.), Nos. 7 and 8 substituted "Arkansas State Game and Fish Commission" for "commission" in (a)(3), (a)(4), (b)(1) through (b)(3), and (c); substituted "Rural Services Division of the Arkansas Economic Development Commission" for "Department of Rural Services" in (b)(1); and substituted "division" for "department" in (b)(2) and (b)(3).

SUBTITLE 5. MINERAL RESOURCES GENERALLY

CHAPTER 55
GENERAL PROVISIONS

SUBCHAPTER.
2. Arkansas Geological Survey.

Subchapter 2 — Arkansas Geological Survey

Effective Dates. Acts 2013, No. 708, § 3: July 1, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this Act transfers the State Board of Registration for Professional Geologists to the Arkansas Geological Survey; that to effectively administer this Act the transition should occur at the beginning of the next fiscal year; and that the effectiveness of the Act of July 1, 2013, is essential to the operation of the agencies. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of public peace, health and safety shall become effective on July 1, 2013."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

15-55-204. State Geologist.

(a)(1) The State Geologist shall be appointed by and serve at the pleasure of the Governor.

(2) The State Geologist shall report to the Secretary of the Department of Energy and Environment.

(b) He or she shall:

(1) Be charged with the duty of administering the provisions of this subchapter and the rules and orders established thereunder;

(2) Be custodian of all property held in the name of the Arkansas Geological Survey, and shall be, ex officio, in consultation with the Secretary of the Department of Energy and Environment, the disbursing agent of all funds available for its use; and

(3) Furnish bond to the state, with corporate surety thereon, in the penal sum of ten thousand dollars ($10,000), conditioned that he or she will faithfully perform his or her duties of employment and properly account for all funds received and disbursed by him or her. An additional disbursing agent's bond shall not be required of the State Geologist. The bond so furnished shall be filed with the Secretary of State, and an executed counterpart thereof shall be filed with the Auditor of State.

(c) The Arkansas Geological Survey, by resolution duly adopted, may delegate to the State Geologist any of the powers or duties vested in or imposed upon it by this subchapter, and the delegated powers and duties may be exercised by the State Geologist in the name of the Arkansas Geological Survey.

History. Acts 1963, No. 16, §§ 8, 9; A.S.A. 1947, §§ 9-400.7, 9-400.8; Acts 2019, No. 315, § 1153; 2019, No. 910, § 3068.

Amendments. The 2019 amendment by No. 315 deleted "regulations" following "rules" in (b)(1).

The 2019 amendment by No. 910 redesignated (a) as (a)(1); added (a)(2); inserted "in consultation with the Secretary of the Department of Energy and Environment" in (b)(2); and substituted "Arkansas Geological Survey" for "commission" twice in (c).

15-55-205. Geological assistants and engineers.

(a) It shall be the duty of the State Geologist, by and with the approval of the Arkansas Geological Survey and the Secretary of the Department of Energy and Environment, to appoint trained geological assistants, engineers, and others efficient in the arts and sciences as may be necessary to completely carry on the investigations undertaken.

(b) The State Geologist, assistants, and engineers, are directed to go into any mine or other place, where it is thought necessary by the State Geologist to go, in executing the directions of the Arkansas Geological Survey or the Department of Energy and Environment.

History. Acts 1909, No. 348, § 4, p. 1020; C. & M. Dig., § 4975; Pope's Dig., § 12224; A.S.A. 1947, § 9-401.1; Acts 2019, No. 910, § 3069.

Amendments. The 2019 amendment inserted "and the Secretary of the Department of Energy and Environment" in (a); and added "or the Department of Energy and Environment" in (b).

15-55-213. Access to information.

The Arkansas Geological Survey and the Division of Information Systems shall grant access to and provide information determined by the Commissioner of State Lands to be necessary to successfully accomplish its mission.

History. Acts 2001, No. 1417, § 8; 2019, No. 910, § 6076.

Amendments. The 2019 amendment substituted "Division of Information Systems" for "Department of Information Systems" and deleted "Office of the" preceding "Commissioner".

15-55-214. [Repealed.]

Publisher's Notes. This section, concerning the transfer of the State Board of Registration for Professional Geologists to the Arkansas Geological Survey, was repealed by Acts 2015, No. 1149, § 12. The section was derived from Acts 2013, No. 708, § 2.

CHAPTER 56

MINERAL LANDS AND INTERESTS

SUBCHAPTER.
3. Leases Generally.

Subchapter 3 — Leases Generally

SECTION.
15-56-302. Summons — Validity of lessee's title.

15-56-302. Summons — Validity of lessee's title.

(a) Summons shall be issued and served as in other cases in circuit court.

(b) All persons, if any, whose names or whereabouts are stated in the petition to be unknown to the plaintiff shall be deemed and taken as defendants by the name or designation of "all whom it may concern", and such persons may be constructively summoned, as provided by Rule 4 of the Arkansas Rules of Civil Procedure. However, the validity of the lessee's title under the lease, when approved by the court, shall not thereafter be subject to attack by any person whatsoever, including, but not limited to, nonresidents, minors, or other incompetents, except by direct appeal in the manner provided by law.

History. Acts 1937, No. 220, § 3; Pope's Dig., § 11197; Acts 1963, No. 85, § 3; A.S.A. 1947, § 52-203; Acts 2013, No. 1148, § 4.

Subchapter 4 — Leases by Life Tenants

15-56-405. Court order — Disposition of royalties.

CASE NOTES

Particular Cases.

Where a lessee surrendered an oil and gas lease before the primary term expired and before drilling any wells, and a trustee alleged that the lessee breached the lease, the lessee was properly granted summary judgment because Frein was the best evidence of Arkansas law and the present case was not distinguishable; in both cases, the drilling requirement was separate from the no-rent clause, and the "paid up" consideration was a payment at the beginning of the lease, not at the expiration of the lease term. First Tenn. Bank N.A. v. Pathfinder Exploration, LLC, 754 F.3d 489 (8th Cir. 2014).

CHAPTER 57

MINING AND RECLAMATION GENERALLY

SUBCHAPTER.

Subchapter 2 — Voluntary Reclamation by Landowners

SECTION.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

15-57-202. Exemption from land reclamation laws.

(a) The owners of lands on which are situated open-cut mining pits that are not subject to the requirements of the Arkansas Open-Cut Land Reclamation Act of 1977 [repealed] or any other land reclamation laws of this state are authorized to make voluntary environmental or aesthetic improvements to reclaim or improve the lands and the open-cut mining pits thereon after first giving written notice of the proposed improvements to the Division of Environmental Quality.

(b) Any environmental or aesthetic reclamation or improvement of the lands shall not be construed to be open-cut mining as defined in the Arkansas Open-Cut Land Reclamation Act of 1977 [repealed] and shall not subject the lands, pits, or the owners thereof to the requirements of the provisions of the open-cut land reclamation laws of this state.

History. Acts 1983, No. 77, § 1; A.S.A. 1947, § 52-972; Acts 1999, No. 1164, § 137; 2019, No. 910, § 3070.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a).

15-57-203. Notice of proposed reclamation — Investigation.

(a) Any owner of such lands who wishes to make environmental or aesthetic improvements to reclaim or improve the lands, as authorized in this subchapter, shall file written notice thereof with the Division of Environmental Quality before entering upon the improvements.

(b) The purpose of the notice shall be to advise the division of the proposed reclamation or improvements to be made and to enable the division to make investigations necessary to assure that the owner of the lands does not engage in activities in connection with any reclamation or improvement project that would be in violation of The Arkansas Open-Cut Land Reclamation Act, § 15-57-301 et seq.

History. Acts 1983, No. 77, § 2; A.S.A. 1947, § 52-973; Acts 1999, No. 1164, § 138; 2019, No. 910, § 3071.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a); and substituted "division" for "department" twice in (b).

15-57-204. Quartz crystal mined on private property.

(a) A person who owns both the surface rights and subsurface rights of private property that mines quartz crystal on the private property shall remove topsoil and spoil and store it on the mining site separately for future reclamation needs.

(b) Upon completion of mining on private property, the private property owner shall:

(1) Leave the mining site in a condition that safeguards the mining site from trespass if any highwalls are left on the mining site; and

(2)(A) Whenever possible:

(i) Backfill spoil into the pits;

(ii) Cover the mining site with topsoil; and

(iii) Revegetate the mining site to prevent pollution of the waters of the state.

(B) If the private property owner does not place spoil back into the final cut, the private property owner shall:

(i) Grade the spoil so that no slope is steeper than one foot (1') vertical to three feet (3') horizontal; and

(ii) Respread and revegetate the topsoil to prevent pollution of the waters of the state.

History. Acts 2017, No. 1121, § 2; 2019, No. 384, § 5.

Amendments. The 2019 amendment inserted "private property" twice in (b)(2)(B).

Subchapter 3 — Arkansas Open-Cut Land Reclamation Act

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

15-57-303. Definitions.

As used in this subchapter:

(1) "Affected land" means the area of land where open-cut mining has been or is taking place or upon which spoil has been deposited or any other surface disturbance, including haul roads, processing and loading facilities, or appurtenances related to the mining operations on or after July 1, 1977, until the land is reclaimed;

(2) "Commercial purposes" means the sale of material from an open-cut mine as either a cash transaction, part of a contractual agreement involving payment for materials provided, or for use in another process to create a product with value;

(3) "Commission" means the Arkansas Pollution Control and Ecology Commission or such commission or other entity as may lawfully succeed to the powers and duties of the commission;

(4) [Repealed.]

(5) [Repealed.]

(6) "Final cut" means the last pit created in an open-cut mined area;

(7) "High wall" means that side of the pit adjacent to unmined land;

(8) "Open-cut mining" means the surface extraction of clay, bauxite, sand, gravel, soil, shale, or other materials for commercial purposes;

(9) "Operator" means any person engaged in or controlling an open-cut mining operation;

(10) "Peak" means a projecting point of spoil created in the open-cut mining process;

(11) "Permit term" means the period of time beginning with the date upon which a permit is granted for open-cut mining of lands under the provisions of this subchapter and ending on the date requested by the operator and specified by the Division of Environmental Quality, though not to exceed five (5) years;

(12) "Person" means any individual, partnership, firm, company, public or private corporation, cooperative, association, joint-stock company, trust, estate, political subdivision, or any agency, board, department, or bureau of the state or any other legal entity recognized by law as the subject of rights and duties;

(13) "Pit" means a tract of land where open-cut mining is taking place;

(14) "Reclamation for productive use" means conditioning areas affected by open-cut mining to make them suitable for any uses or purposes consistent with those enumerated in the declaration policy;

(15) "Ridge" means a lengthened elevation of spoil created in the open-cut mining process;

(16) "Right-of-way" means the portion of land over or under which certain facilities, including, but not limited to, roadways, pipelines, or power lines, are built; and

(17) "Spoil" means all waste material and debris connected with open-cut mining and with the mechanical removal, cleaning, and preparation of materials at the mine site.

History. Acts 1991, No. 827, § 3; 1999, No. 1164, § 139; 1999, No. 1526, § 1; 2019, No. 910, §§ 3072, 3073.

Amendments. The 2019 amendment repealed (4) and (5); and substituted "Division of Environmental Quality" for "department" in (11).

15-57-304. Violations.

(a) It shall be unlawful for any person to:

(1) Violate any provision of this subchapter or any rule or order of the Arkansas Pollution Control and Ecology Commission or the Division of Environmental Quality issued pursuant to this subchapter;

(2) Engage in open-cut mining without a permit issued pursuant to this subchapter;

(3) Violate any conditions of a permit or reclamation plan issued pursuant to this subchapter;

(4) Knowingly make any false statement, representation, or certification, or knowingly fail to make a statement, representation, or certification in any application, plan, record, report, or other document filed or required to be maintained under this subchapter; or

(5) Willfully resist, prevent, impede, or interfere with the Director of the Division of Environmental Quality or any of his or her authorized representatives in the performance of duties pursuant to this subchapter.

(b) For the purposes of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

History. Acts 1991, No. 827, § 19; 1999, No. 1526, § 2; 2019, No. 315, § 1154; 2019, No. 910, §§ 3074, 3075.

Amendments. The 2019 amendment by No. 315 deleted "regulation" following "rule" in (a)(1).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a)(1) and (a)(5).

15-57-305. Civil and administrative penalties.

(a) Civil Penalties. The Division of Environmental Quality is authorized to institute a civil action in any court of competent jurisdiction to accomplish any or all of the following:

(1) To restrain any violation of or to compel compliance with the provisions of this subchapter or of any order, rule, permit, or reclamation plan issued pursuant thereto;

(2) To accomplish remedial measures as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter, including the reclamation of affected land;

(3) To recover all costs, expenses, and damages to the division or any other agency of the state in enforcing the provisions of this subchapter and reclaiming affected land;

(4) To assess civil penalties for violations of this subchapter or of any order, rule, permit, or reclamation plan issued pursuant thereto in an amount not to exceed:

(A) One thousand dollars ($1,000) for the first violation;

(B) Two thousand five hundred dollars ($2,500) for a second separate violation of the same offense within two (2) years; and

(C) Five thousand dollars ($5,000) for a third separate or subsequent violation of the same offense within two (2) years;

(5) To recover civil penalties assessed pursuant to subsections (b) and (c) of this section; or

(6) To forfeit a reclamation bond.

(b) Administrative Penalties.

(1) Any person who engages in open-cut mining without first securing a permit as required by this subchapter or who fails to reclaim affected lands in accordance with this subchapter or who violates any provision of this or any order, rule, permit, or reclamation plan issued pursuant thereto, may be assessed an administrative civil penalty by the division not to exceed:

(A) One thousand dollars ($1,000) for the first violation;

(B) Two thousand five hundred dollars ($2,500) for a second separate violation of the same offense within two (2) years; and

(C) Five thousand dollars ($5,000) for a third separate or subsequent violation of the same offense within two (2) years.

(2) No administrative civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing and has exhausted all administrative appellate remedies.

(3) The amount of the administrative civil penalty shall be determined in accordance with rules adopted by the Arkansas Pollution Control and Ecology Commission, including, but not limited to, the rules on civil penalties.

(c) All hearings and appeals arising under this subchapter shall be conducted in accordance with the procedures described in §§ 8-4-218 — 8-4-229 and in accordance with rules adopted by the commission, including, but not limited to, the rules on administrative procedures.

(d) As an alternative to the limits on civil or administrative penalties under subsection (a) or subsection (b) of this section, if a person who is found liable in an action brought under subsection (a) or subsection (b) of this section has derived pecuniary gain from the commission of mining without a permit or mining outside of the area authorized in the permit, then the person may be ordered to pay a civil penalty equal to the amount of the pecuniary gain.

History. Acts 1991, No. 827, § 4; 1999, No. 1526, § 3; 2001, No. 550, § 1; 2011, No. 609, § 1; 2019, No. 315, §§ 1155-1159; 2019, No. 910, §§ 3076-3078.

Amendments. The 2019 amendment by No. 315 deleted "regulation" following "rule" in (a)(1) and the introductory language of (a)(4); deleted "regulation" following "order" in the introductory language of (b)(1); and substituted "rules" for "regulations" twice in (b)(3) and (c).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a); and substituted "division" for "department" in (a)(3) and (b)(1).

15-57-306. Administration.

The Division of Environmental Quality through the Director of the Division of Environmental Quality, and any representatives designated by the director, shall administer and enforce the provisions of this subchapter, except for those provisions specifically designated to the Arkansas Pollution Control and Ecology Commission.

History. Acts 1991, No. 827, § 5; 2019, No. 910, § 3079.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" twice.

15-57-307. Rules.

The Arkansas Pollution Control and Ecology Commission may adopt and promulgate rules necessary to administer the provisions of this subchapter.

History. Acts 1991, No. 827, § 6; 2019, No. 315, § 1160.

Amendments. The 2019 amendment deleted "and regulations" following "Rules" in the section heading and in the text.

15-57-308. Technical and financial assistance.

The Division of Environmental Quality shall have the authority to cooperate with and receive technical and financial assistance from the United States, or any department, agency, or officer thereof, for any purposes relating to the reclamation of affected lands.

History. Acts 1991, No. 827, § 7; 2019, No. 910, § 3080.
Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality".

15-57-309. Entry on lands for inspection.

The Division of Environmental Quality or its designated representatives may enter upon the lands affected by open-cut mining at all reasonable times for the purpose of determining compliance with the provisions of this subchapter.

History. Acts 1991, No. 827, § 8; 2001, No. 550, § 2; 2019, No. 910, § 3081.
Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality".

15-57-310. Necessity of permit — Effective date.

(a) It shall be unlawful for any operator to engage in open-cut mining without first obtaining from the Division of Environmental Quality a permit to do so in the form required by the division.

(b) An operator shall be deemed to be engaged in open-cut mining when he or she affects any land in preparation for open-cut mining.

(c)(1) The Arkansas Department of Transportation or its contractor is not required to obtain a permit for an open-cut mine when the material is used exclusively in the construction, reconstruction, improvement, or maintenance of roadways.

(2) Reclamation of the area shall conform to the standard specifications for highway construction upon discontinuation of use of the pit for the construction, reconstruction, improvement, or maintenance of roadways.

(3) The occasional sale of material to the department by an operator does not exempt the operator from complying with his or her permit requirements or from the requirements of this subchapter.

(4) When reclamation requirements of the operator will interfere with a contractual agreement with the department, the operator shall be allowed to revise the operator's reclamation plan and schedule of completion accordingly and in keeping with the declaration of policy of this subchapter.

(d)(1) Nothing in this subchapter shall be construed to require any operator to reclaim or revegetate any area affected by open-cut mining prior to July 1, 1971.

(2) Nothing in this subchapter shall be construed to require any operator to reclaim or revegetate any previously exempted excavation

sites such as soil and shale pits that were affected and abandoned prior to January 1, 1999.

(3) Nothing in this subchapter shall be construed to apply to the removal of soil, shale, or stone at a quarry operation that is regulated under the Arkansas Quarry Operation, Reclamation, and Safe Closure Act, § 15-57-401 et seq.

(4) Nothing in this subchapter shall be construed to apply to any excavation activity associated with the improvement or maintenance of any agricultural lands or associated irrigation systems.

(e) The requirements of this subchapter shall not apply to the noncommercial removal of clay, bauxite, sand, gravel, soil, shale, or other materials from lands by the owner of said lands or by a contractor hired by the owner for the exclusive use by the landowner for construction, improvement, or maintenance of roads on any of the owner's lands, for any environmental improvements to previously disturbed lands, or for the concurrent or short-term excavation of materials for ninety (90) days or less during the construction of buildings either for residential, commercial, or industrial purposes.

(f)(1) The mining of gravel or other materials from streams or stream beds shall comply with the permitting requirements of this subchapter.

(2) There shall be no mining in streams designated as "extraordinary resource waters" of the state, as established in water quality standards duly promulgated by the Arkansas Pollution Control and Ecology Commission for all surface waters of the State of Arkansas.

(g)(1) The division shall develop rules to implement the provisions of this chapter.

(2) The division shall develop documentation that will guide an operator through the permitting process.

History. Acts 1991, No. 827, § 9; 1993, No. 378, § 1; 1995, No. 1345, § 2; 1999, No. 1526, § 4; 2017, No. 707, § 37; 2019, No. 315, § 1161; 2019, No. 384, § 6; 2019, No. 910, §§ 3082, 3083.

Amendments. The 2017 amendment substituted "Department of Transportation" for "Arkansas State Highway and Transportation Department" in (c)(1), (c)(3), and (c)(4); substituted "when" for "where" in (c)(1); deleted "the provisions of" following "conform to" in (c)(2); deleted "open-cut mine" following "by an" in (c)(3); and, in (c)(4), substituted "When" for "Where" and substituted "the operator's" for "his or her".

The 2019 amendment by No. 315 substituted "rules" for "regulations" in (g)(1).

The 2019 amendment by No. 384, in (c)(1), substituted "The Arkansas Department of Transportation" for "Notwithstanding the provisions of this section, the Arkansas Department of Transportation", and substituted "is not" for "shall not be"; and substituted "construction, reconstruction, improvement, or maintenance of roadways" for "above listed purposes" in (c)(2).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" twice in (a) and (g).

15-57-311. Application for permit — Fee — Bond.

(a) Any person desiring to engage in open-cut mining shall make written application to the Division of Environmental Quality for a

permit. The application shall be made upon a form furnished by the division.

(b) The applicant shall fully state the information required on the form and provide a legal description of the area of land to be permitted and proof that the applicant has the right to mine the area.

(c) The perimeter of the area to be permitted must be clearly marked on the ground at all times until such time as the permitted area is released from reclamation liability by the division.

(d) The application shall be accompanied by the applicant's detailed plan of reclamation of the area to be affected. The plan shall include a time schedule for the completion of each phase of reclamation and an estimate of the cost of each phase of reclamation.

(e) The application for a mining permit shall be accompanied by a bond or substituted security for the affected or the proposed affected area in favor of the State of Arkansas through the division, to be effective from and after the time that the operator has affected land in the process of open-cut mining or after the time that a permit is granted and which shall meet the requirements of § 15-57-316.

(f) The application for a permit shall be accompanied by a fee of ten dollars ($10.00) per acre with a two-hundred-dollar minimum.

(g) The division may approve a permit for mining and reclaiming the permitted area in increments, provided that the permit application contains an acceptable incremental mining plan and is accompanied by a bond or substituted security to cover reclamation of each successive increment prior to affecting it.

(h) The permit shall require a bond or substituted security to be submitted for the cost of reclamation of each successive increment prior to the time that any area within the increment is affected by the operator.

(i) Variances and interim authority issued under this subchapter shall comply with the requirements of § 8-4-230.

(j)(1)(A) After notice and opportunity for a public hearing, the division may develop and issue general permits for any category of activities involving open-cut mining operations if the division determines that the activities in a category:

(i) Are similar in nature;

(ii) Will cause only minimal temporary adverse environmental effects if performed separately; and

(iii) Will have only minimal cumulative adverse effects on the environment.

(B) To qualify for inclusion under the general permit, applicants shall submit a notice of intent and supporting documentation on forms developed by the division.

(C) Facilities and practices not qualifying for inclusion under the conditions of a general permit shall obtain an individual permit.

(2) The Director of the Division of Environmental Quality at his or her discretion may require an applicant to seek coverage under an individual permit.

(3)(A) Unless extended by the director, no general permit issued under this subsection shall be effective for a period of more than five (5) years after the date of its issuance.

(B) The general permit may be revoked or modified by the division if after opportunity for a public hearing the division determines that the activities authorized by the general permit:

(i) May have an adverse impact on the environment; or

(ii) Are more appropriately authorized by individual permits.

(4) Before issuing general permits, the Arkansas Pollution Control and Ecology Commission shall promulgate rules necessary to implement and administer the provisions of this subsection.

History. Acts 1991, No. 827, § 10; 1999, No. 1526, § 5; 2001, No. 550, § 3; 2005, No. 855, § 1; 2019, No. 910, §§ 3084-3091.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a) and (j)(2); and substituted "division" for "department" throughout the section.

15-57-313. Withdrawal of land covered by permit.

An operator may withdraw any land covered by a permit, except affected land, by notifying the Division of Environmental Quality, in which case the penalty of the bond or substituted security filed by the operator pursuant to the provisions of this subchapter shall be reduced proportionately.

History. Acts 1991, No. 827, § 12; 2019, No. 910, § 3092.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality".

15-57-314. Extension of permit.

Where the area for which a permit is in effect is not mined or where open-cut mining operations have not been completed during the permit term, the permit as to such area may be extended by the Division of Environmental Quality on the terms and conditions required by the division.

History. Acts 1991, No. 827, § 13; 2019, No. 910, § 3093.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality", and "division" for "department".

15-57-315. Duties of operator.

Any operator of an open-cut mine will be subject to the following requirements with respect to the mining and reclamation of the site:

(1)(A)(i) All affected land shall be graded to a rolling or terraced topography with adequate drainage.

(ii)*(a)* No final slope will be steeper than one (1) vertical to three (3) horizontal.

(b) The Division of Environmental Quality may approve a steeper final slope where the original contour of the affected land was steeper than the one-to-three ratio if the operator can assure, to the satisfaction of the division, the integrity of the final contour.

(B) The Director of the Division of Environmental Quality shall develop rules which will allow the division the discretion to permit deviations from certain reclamation standards, including final slope steepness requirements within this subdivision (1), because of unique mining situations, provided the deviations are consistent with the declaration of policy in this subchapter;

(2)(A) The operator may construct earthen dams where lakes may be formed in accordance with sound engineering practices.

(B)(i) If a lake is to be left as a part of the reclamation plan, provisions must be made by the operator to assure that a pH factor of six (6) to nine (9) is maintained.

(ii) However, where water runoff from outside the affected area into the lake has a pH factor of less than six (6) or greater than nine (9) or in order to allow the lake to more closely match the natural environment, the division, in its discretion, may allow a deviation in pH levels;

(3) On all affected land which is to be reforested, the operator shall construct reasonable fire lanes or access roads of at least ten feet (10') in width through the land unless this requirement is waived by the division;

(4)(A) Requirements for both establishment and maintenance of the vegetative cover shall be established by the division, and the operator shall comply with the requirements or use other equally effective means.

(B) When the site slope is in condition for vegetating, a soil test may be made as a basis for soil amendments. Amendments may include lime, fertilizer, secondary micronutrients, an application of topsoil, or other means reasonably calculated to restore the slope to vegetating capabilities.

(C)(i) Laboratory soil tests and recommendations shall be obtained from the University of Arkansas Cooperative Extension Service or any other public or private organization or person approved by the division.

(ii) The operator shall furnish copies of the soil sample report and recommendations to the division.

(D) Specifications concerning species to be grown, intended use, and associated information shall be provided by the operator on soil sample information sheets, and varieties and seeding rates of the species to be planted must conform to the recommendations of state and federal agricultural or forestry agencies;

(5)(A) Open-cut mining operations must maintain an undisturbed buffer zone of fifty feet (50') from any adjacent property line or right-of-way until reclamation begins.

(B)(i) For the division to approve a variance on the fifty-foot buffer zone, there must be an agreement between the affected property owner or right-of-way holder and the operator.

(ii) Proof of such an agreement must be provided to the division.

(C) The operator may begin creating the final slope during reclamation at ten feet (10') from the adjacent property line or right-of-way.

(D) For purposes of this subdivision (5), the term "property line", "property owner", or "right-of-way holder" means and includes boundaries and owners of reserved or granted mineral rights where the fee simple interest and mineral interest have been severed;

(6)(A) Whenever the exposed face of mined seams that contain acid-forming materials is not covered by water or by permanent water impoundment, the operator who mined the seams shall cover the exposed face of the seams with earth or spoil materials to a depth of not less than three feet (3') upon receiving approval from the division.

(B) Alternatively, the division may approve any other course or conduct proposed by the operator which will assure protection of the seams from atmospheric exposure, minimize leaching action, or otherwise conform with water pollution control criteria to prevent formation of acid mine water or discharge mine water;

(7)(A) The operator shall submit to the division no later than June 1 of each year of the permit term:

(i) A map in a form acceptable to the division showing the location of the affected areas by section, township, range, and county with other legal description as will identify the affected land during the permit term upon which the operator has completed mining operations;

(ii) The extent of completed reclamation as required under § 15-57-311(d); and

(iii) A legend upon the map showing the number of acres of affected land.

(B) The annual report shall include the amount of material mined during each twelve-month period;

(8)(A) The division's approval of the operator's reclamation plan may be based upon the advice and technical assistance of the Arkansas Natural Resources Commission, the Arkansas State Game and Fish Commission, the State Forester, the Arkansas Geological Survey, and other agencies or persons having experience in foresting and reclaiming open-cut mined lands with forest or agronomic or horticultural species, based upon scientific knowledge from research into reclaiming and utilizing forest and agronomic species on open-cut mined lands.

(B) The operator shall designate which parts of the affected land shall be reclaimed for forest, pasture, crop, horticulture, homesite, recreational, industrial, or other use, including food, shelter, or ground cover for wildlife and shall show each use by appropriate designation on the reclamation map;

(9)(A)(i) All reclamation shall be completed by the operator in compliance with its detailed plan of reclamation.

(ii) Where natural weathering and leaching of affected land fails to support plant growth at the end of the reclamation period as required under § 15-57-311(d), the division, at the request of the operator, may approve a permit extension from year-to-year from the termination of the permit on the permitted area.

(B) In the event that the operator does not comply with its schedule of reclamation or extensions granted within a reasonable period of time, to be determined by the division, the bond or substituted security of affected land not satisfactorily reclaimed shall be forfeited;

(10) In the event that the operator's reclamation plan is found impracticable by the operator, upon the application of the operator, the division, in its discretion, may allow the modification of the reclamation plan, provided that the modified plan will carry out the purposes of this subchapter;

(11) All mine spoil generated by the operator shall be disposed of in a manner approved by the division and designed to control siltation, erosion, or other damage to streams and natural watercourses, as best allowed by the soil conditions of the permitted area;

(12) The operator shall preserve any topsoil for redistribution during reclamation unless otherwise approved by the director;

(13) The operator shall protect the public from the dangers inherent in an open-cut mining operation by restricting access to the mine site and posting adequate warning signs; and

(14) Upon approval from the division, stockpiles of processed materials may be left without being reclaimed if there is a likelihood that there will be a market for the material in the future and that there will be no form of pollution from the stockpiles remaining on or leaving the property.

History. Acts 1991, No. 827, § 14; 1993, No. 378, § 2; 1995, No. 1345, § 1; 1999, No. 1526, § 6; 2001, No. 550, § 4; 2019, No. 315, § 1162; 2019, No. 910, §§ 3094-3106.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (1)(B).

The 2019 amendment by No. 910, throughout the section, substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" and "division" for "department".

15-57-316. Bond of operator.

(a)(1)(A) Any bond provided in this subchapter to be filed with the Division of Environmental Quality by the operator shall be in such form as the division shall prescribe, payable to the State of Arkansas through the division, conditioned that the operator shall faithfully perform all requirements of this subchapter and comply with all rules and orders made in accordance with the provisions of this subchapter.

(B) The bond shall be signed by the operator and a good and sufficient corporate surety authorized to do business in the United States.

(2) The penalty of the bond shall be in an amount equal to the estimated cost of reclamation, as required in § 15-57-311(d).

(3)(A) In the event that the division finds the cost of reclamation to be an underestimate, the division shall make use of available expertise to establish the estimated cost of reclamation, which shall be the amount of the bond.

(B) In the event of a disagreement concerning the estimate of the proper amount of the bond, the division may retain independent expertise as is necessary to establish the amount of the bond.

(4) The Arkansas Pollution Control and Ecology Commission shall promulgate rules concerning bonds and substituted security which will attempt to ensure that small operators are not precluded from development of mineral resources as a result of high bond amounts, but which will provide reasonable security.

(b)(1) The division may accept cash, securities, or other collateral, including, but not limited to, letters of credit and mortgages on real property provided by the operator in an amount equal to that of the required bond as provided in subsection (a) of this section.

(2) The bond or substituted security may be increased or reduced from time to time as provided in this subchapter.

(3) The bond or substituted security shall be in effect and subject to forfeiture in accordance with this subchapter from and after the time that the operator has affected land in the process of open-cut mining or after the time a permit is granted by the division until the affected area has been reclaimed, approved, and released.

(c)(1) Any bond or substituted security shall not be cancelled by the surety unless it has given no less than ninety (90) days' notice of the cancellation to the division.

(2) In no event shall a bond be cancelled on an area that at the time of cancellation has become affected land under the provisions of this subchapter.

(d)(1) If the license to do business of any surety upon a bond or substituted security filed with the division pursuant to this subchapter shall be suspended or revoked, the operator, within thirty (30) days after receiving notice of the revocation, shall substitute for the surety a licensed corporate surety.

(2) Upon the failure of the operator to make substitution of the surety, the division shall suspend the permit of the operator until the substitution is made.

(e)(1) The division shall give written notice to the operator of any violation of this subchapter or noncompliance with any of the rules or orders promulgated under this subchapter.

(2) If corrective measures determined by the division, including, but not limited to, increase of the bond or substituted security, are not commenced or agreed to by the operator within a reasonable period of

time to be determined by the division, the division may terminate the permit of the operator and forfeit the bond or substituted security.

(3) If a permit has not been issued but a bond has been posted during the application process and this process will not be completed and there is affected land at the site, the division may forfeit the bond or substituted security as provided in § 15-57-317.

(f) The division may reclaim any affected land for which a bond has been forfeited.

(g)(1) Whenever an operator shall have completed all requirements under the provisions of this subchapter as to any affected land, it shall so notify the division.

(2) If the division determines that the operator has completed reclamation requirements and achieved results appropriate to the use for which the affected land was reclaimed, the division shall release the operator from further obligations regarding the affected land and the penalty of the bond or substituted security shall be reduced accordingly.

(h)(1) Upon partial completion of reclamation, the operator may submit a written request to the division for the purpose of proportionately reducing the amount of the bond or substituted security upon affected lands.

(2) If the division determines that proper reclamation has been accomplished under the provisions of this subchapter on an area less than the total area of the affected area, the division shall proportionately reduce the amount of the bond or substituted security.

(i) No operator shall be eligible to receive a new or renewed permit who has had a permit revoked, bond forfeited, or who has outstanding substantial unmitigated violations of this subchapter, including failure to reclaim, unless the division finds upon review a demonstrable change of circumstances justifying an exception to these prohibitions.

(j) Liability under the bond or substituted security shall be for the duration of the open-cut mining operation and for that period required to establish successful reclamation of the affected area.

(k) Nothing contained herein shall be deemed to preclude the right of the division to recover the actual cost of reclamation over and above the amount of bond.

History. Acts 1991, No. 827, § 15; 1999, No. 1526, § 7; 2019, No. 315, §§ 1163-1165; 2019, No. 910, § 3107.

Amendments. The 2019 amendment by No. 315 deleted "regulations" following "rules" in (a)(1)(A) and (e)(1); and substituted "rules" for "regulations" in (a)(4).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a)(1)(A); and substituted "division" for "department" throughout the section.

15-57-317. Bond forfeiture proceedings.

(a) The Division of Environmental Quality may institute proceedings to have the bond or substituted security of the operator forfeited for any of the following reasons, including, but not limited to:

(1) Failure to abate any violation of this subchapter or any rule promulgated thereunder;

(2) Failure to comply with the terms and conditions of the open-cut mining permit or the bond;

(3) Failure to comply with any order of the division;

(4) Failure to reclaim any affected land in accordance with this subchapter; or

(5) Insolvency, bankruptcy, or receivership of the operator.

(b) The division shall notify the operator in writing of the bond forfeiture, and the operator shall be given an opportunity for a hearing as provided in this subchapter.

History. Acts 1991, No. 827, § 16; 1999, No. 1526, § 8; 2019, No. 315, § 1166; 2019, No. 910, § 3108.

Amendments. The 2019 amendment by No. 315 deleted "or regulation" following "rule" in (a)(1).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in the introductory language of (a); and substituted "division" for "department" in (a)(3) and (b).

15-57-318. Registration of existing open-cut mines.

The Division of Environmental Quality shall require registration of all existing unpermitted open-cut mines in which mining operations are not being conducted.

History. Acts 1991, No. 827, § 18; 2019, No. 910, § 3109.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality".

15-57-319. Land Reclamation Fund — Permit fee.

(a) A Land Reclamation Fund is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State. The Land Reclamation Fund shall consist of civil penalty and bond forfeiture amounts, gifts, grants, donations, and other funds as may be made available by the General Assembly, including all interest earned upon moneys deposited into the Land Reclamation Fund. The Division of Environmental Quality shall use the funds to accomplish reclamation of affected lands.

(b) All fees and any moneys collected as reimbursement for expenses, costs, and damages to the state under the provisions of this subchapter shall be deposited into the general revenue fund of the division and shall be used to defray the administrative and enforcement costs of this subchapter.

(c) The Arkansas Pollution Control and Ecology Commission may by rule prescribe an annual permit fee on affected lands.

History. Acts 1991, No. 827, § 17; 2019, No. 315, § 1167; 2019, No. 910, § 3110.

Amendments. The 2019 amendment by No. 315 substituted "rule" for "regulation" in (c).

The 2019 amendment by No. 910 substituted "Division of Environmental Qual-

ity" for "Arkansas Department of Environmental Quality" in (a); and substituted "division" for "department" in (b).

15-57-320. Exemptions.

(a) Nothing in this subchapter shall be construed to require any agent or employee of a county or municipal government or a landowner selling exclusively to those government entities to comply with any of the provisions of this subchapter when engaged in open-cut mining outside of the channel of a stream for the construction, reconstruction, improvement, or maintenance of streets and highways or private roads, streets, driveways, or highways, or other public projects of a county or municipality when it is conducted under the authority of such a government for such activities and on lands for which the county or municipal government has established rights.

(b)(1) The county and municipal governments shall remove topsoil and spoil and store it on the mining site.

(2) Upon completion of mining, the site shall be graded such that no slope will be steeper than one foot (1') vertical to three feet (3') horizontal, and the topsoil shall be respread and the site revegetated in a manner to prevent pollution of the waters of Arkansas.

(c) An agent or employee of a county or municipal government may remove gravel or other materials from any stream in order to protect the integrity of bridges or low water crossing of any public roadway without obtaining a permit.

(d) A governmental unit may remove gravel or other material from any stream in order to protect the integrity of a government-owned or government-controlled structure without obtaining a permit.

(e)(1) Flood control projects authorized by the United States Army Corps of Engineers shall be exempt from the permitting requirement. Provided, however, that certification under section 401 of the Federal Clean Water Act is obtained for said project.

(2) In the event that authorization pursuant to section 404 of the Federal Clean Water Act is determined by the United States Army Corps of Engineers not to be required for a specific flood control or bank stabilization project, the Division of Environmental Quality will review the proposed project plan using the Section 401 water quality certification criteria.

(3) The division shall provide the necessary authorization for the project once it has been determined that the activity will not adversely affect water quality.

(f)(1) All stream gravel mining operations on streams designated as extraordinary resource waters after January 1, 1995, may continue to operate under a permit issued by the division for a period of two (2) years from the date of the designation.

(2) At the end of the two-year period, all mining activities must be terminated and the affected area reclaimed in accordance with the operator's approved reclamation plan.

(g) The permitting provisions of this subchapter shall not apply to any area being excavated for soil or shale that is less than three (3) acres where an undisturbed buffer zone of not less than fifty feet (50') exists between the highwalls of the excavation site and any adjacent property line or to any size area being excavated if the area being excavated is at least one-fourth (¼) of a mile from any adjacent property line.

(h) The permitting provisions of this subchapter do not apply to quartz crystal mined on private property by the person who owns both the surface rights and subsurface rights of the private property.

History. Acts 1993, No. 368, § 1; 1995, No. 1345, § 3; 1999, No. 1164, § 140; 1999, No. 1526, § 9; 2017, No. 1121, § 1; 2019, No. 384, § 7; 2019, No. 910, §§ 3111, 3112.

Amendments. The 2017 amendment added (h).

The 2019 amendment by No. 384 inserted the second occurrence of "private" in (h).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (e)(2); and substituted "division" for "department" in (e)(3) and (f)(1).

Subchapter 4 — Quarry Operation Reclamation, Operation, and Safe Closure

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Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

15-57-402. Definitions.

As used in this subchapter:

(1) "Active" means a quarry wall where extraction is occurring or is planned to occur;

(2) "Affected land" means the area of land to the nearest acre, where the quarrying of stone, industrial activity, and the stockpiling of topsoil and spoil occur;

(3) "Citation" means a written warning of a violation that may be accompanied by a fine when given two (2) times for the same violation;

(4) "Commission" means the Arkansas Pollution Control and Ecology Commission, or such commission or other entity as may lawfully succeed to the powers and duties of the commission;

(5) "Default" means an operation that has uncorrected violations of the requirements of this subchapter which allows the Division of Environmental Quality to forfeit the bond to have the site reclaimed as per the reclamation plan;

(6) [Repealed.]

(7) [Repealed.]

(8) "Exhausted quarry" means a quarry where the stone is depleted;

(9) "Fee" means the notification or annual operating payment made by the operator to the division. The amount cannot be changed except by legislative action. This fee will be payable on or before July 1 for all operating quarries in the current calendar year;

(10) "Final floor" means the bottom surface created in a quarry;

(11) "Final wall" means the last wall created in a quarry;

(12) "Fine" means a penalty for noncompliance which may accompany a second citation, except as provided in other sections of this subchapter for specific violations. Fines are not retroactive, and the amounts cannot be changed except by legislative action;

(13) "Inactive status" means the period of time a quarry is inactive or temporarily shutdown;

(14) "Notification in process" means that a notification of intent is on file and incomplete;

(15) "Notification of intent" is the operator's proper notification to the division of the operator's intent to open a quarry, to temporarily close a quarry, to reactivate a quarry, and to shut down an exhausted quarry;

(16) "Operator" means any person engaged in or controlling a quarrying operation;

(17) "Quarry" means an excavation or pit from which stone is removed;

(18) "Quarry rim" means the top surface of the quarry behind the wall from which has been removed the topsoil and spoil;

(19) "Reclamation plan" is a plan presented to the division by an operator detailing the reclamation and revegetation of lands affected by quarrying both contemporaneously and after the quarry is exhausted, and required by this subchapter;

(20) "Spoil" means the unconsolidated boulders, soil and other naturally occurring materials which lie above a deposit of quarriable stone,

which must be excavated from above a deposit so that extraction can begin;

(21) "Start-up" means the date an operator begins site preparation for quarrying; and

(22) "Topsoil" means the top strata of soil normally associated with the growth of vegetation. It is generally free of boulders, cobbles, or other floating rock and exhibits the growing properties normally associated with, at a minimum, the pasturing of cattle.

History. Acts 1997, No. 1166, § 2; 1999, No. 1164, § 141; 2019, No. 910, §§ 3113-3116.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (5); repealed (6) and (7); and substituted "division" for "department" throughout the section.

15-57-403. Notification — Filing — Public notice and response.

(a) It shall be unlawful for any operator to engage in a quarrying operation without first submitting to the Division of Environmental Quality a notification of intent to quarry or a notification of reactivated quarry in accordance with this subchapter. The submittal, with returned receipt, shall enable the operator to begin or continue quarrying as long as the required reclamation bond is in force and proof of public notification is included. An operator shall be deemed to be quarrying from the time he or she begins start-up until reclamation is completed at the exhausted quarry.

(b) Only new quarries or any land purchased or leased for a quarry after January 1, 1997, will be subject to this subchapter.

(c) There will be no requirements for a notification of intent to be filed with the division for temporarily closed or exhausted quarries in existence prior to January 1, 1998. These quarries will be exempt from the requirements of this subchapter unless reactivated.

(d) A new notification of intent to quarry shall be required if a change in the majority ownership of an operator occurs.

(e) Representatives of the division may make regular site visits to quarry operations, as necessary, to determine compliance with the requirements of the operator's notification. On these visits the operator will make his or her quarry operation accessible to the division.

(f) Upon receipt of notifications of intent, the division will have ninety (90) days to respond to the operator by certified mail to errors or omissions, or both, in the notifications.

(g) On completion of a notification, the division will issue the operator a notice which will be posted on quarry premises at all times when the quarry is in operation and which will state:

"Name of company has completed the requirements, as set out by the 'Arkansas Quarry Operation, Reclamation, and Safe Closure Act' of 1997, and has the unconditional authorization to quarry at this site, so long as the quarry is in compliance with all laws, rules, and regulations for up to five (5) years."

(h) The division, upon finding the operator to be out of compliance with the requirements of his or her notification, may issue warnings, citations, and notices of default to the operator.

(i) All filings and other communication will be by certified mail.

(j)(1)(A) An operator will give notice to the public in a local newspaper of general circulation that he or she intends to open or reactivate a quarry.

(B)(i) The notification will be part of an operator's intent and will be published in the newspaper at the same time the intent is filed with the division.

(ii) Proof of publication shall be provided to the division in the operator's notice of intent.

(C) The notification will indicate the approximate location of the quarry using section, township, and range plus a road address or identifiable local landmarks when possible, the date of start-up and the date the operator plans to temporarily close, if applicable, as well as the operator's name, address, phone number, and contact person.

(D) The notification shall state that interested parties may contact the division for further information and that they have ten (10) days after publication of the notice to notify the division of any request for a public meeting.

(2)(A) If the division receives at least five (5) requests for a public meeting from owners of property within one-half (½) mile of the quarry, it may require that the operator hold a public meeting.

(B) This public meeting shall be held within two (2) weeks after the expiration of the ten-day public notice period.

(C) This public meeting shall be held in a location near the proposed quarry to allow the public to discuss their interests with the operator prior to start-up.

(3)(A) The operator will keep responses from the public on file for two (2) years.

(B) The division will forward responses it receives to the operator.

(4) The operator will keep a record of all action taken resulting from public responses for two (2) years, notifying the division of each action.

History. Acts 1997, No. 1166, § 3; 1999, No. 1320, § 1; 2019, No. 315, § 1168; 2019, No. 910, § 3117.

Amendments. The 2019 amendment by No. 315 inserted "rules" in (g).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in the first sentence of (a); and substituted "division" for "department" throughout the section.

15-57-404. Notification of intent to quarry.

(a)(1) Except for operators of quarries excluded by § 15-57-403(b), any operator desiring to engage in quarrying shall complete a notification of intent to quarry which when submitted to the Division of Environmental Quality by certified mail will entitle said operator to conduct quarry operations.

(2)(A) For all active quarries, as of January 1, 1998, a notification of intent must be on file or in process at the division.

(B) For all new quarries to be opened after January 1, 1998, a notification of intent must be on file or in process at the division before the operator may begin quarry operations.

(3) The notification shall be accompanied by the payment of a fee of two hundred fifty dollars ($250).

(4) The submittal shall be an agreement between the operator and the division.

(5) The operator shall pay an annual fee to the division in the amount of twenty-five dollars ($25.00) per acre of affected land, not to exceed one thousand dollars ($1,000) per quarry.

(6) The notification of intent shall include one (1) copy of the following:

(A) The company name, officers, majority of ownership, on-site superintendents, addresses, name of quarry, phone numbers, anticipated start up and shut down dates;

(B) The following right to quarry, signed and notarized:

"I, the operator of [quarry name] located at [legal description in _____ county], have the legal right by deeds, leases, or other instruments to conduct quarry operations for commercial and other purposes at this location. I will comply with all state and federal laws, rules, and regulations in this operation.

_____ _____

Company Name President

_____

Secretary";

(C) A location map which contains the following:

(i) A seven-and-a-half-foot topographic quad map as prepared by the United States Geological Survey;

(ii) Clearly marked legal boundaries of area to be quarried;

(iii) Clearly defined entrances onto public roads;

(iv) Present use of the property; and

(v) A legal description;

(D) A five-year quarry operation map which contains the following:

(i) Scaled dimensions, that is, one to two hundred (1:200);

(ii) Approximate property boundaries;

(iii) The location and identification of all affected lands to the nearest acre, anticipated for up to five (5) years;

(iv) All pertinent manmade and natural structures including the plant location and the location of safeguarding items as required by § 15-57-410;

(v) Location of topsoil and spoil stockpiles;

(vi) Entrances onto public roads; and

(vii) Areas of natural rock exposure (no topsoil or spoil); and

(E) Notification of intent to reclaim quarry:

"I, operator of [quarry name] located at [legal description in _____ County], agree to reclaim said described quarry in conformance with the Arkansas Quarry Operation, Reclamation, and Safe Closure Act, when the quarry is exhausted.

_____
President

_____
Company Name

_____
Secretary".

(b) The operator's financial plan for reclamation will include:

(1) An estimate of reclamation cost; and

(2) An acceptable bond or substitute security.

(c) All operators will have sixty (60) days to correct any errors or omissions to a notification of intent if notified by the division that a notification of intent is incomplete.

(d) A fine of not more than one hundred dollars ($100) per day, per citation, may be levied against an operator whose notification of intent is not completed and on file in the division within sixty (60) days after receipt of notice by the division of errors and omissions in the first filing. The maximum fine is five thousand dollars ($5,000).

(e) A fine of not more than one hundred dollars ($100) per day, per citation, may be levied against operators which are found to be out of compliance with these requirements. The maximum fine is five thousand dollars ($5,000).

History. Acts 1997, No. 1166, § 4; 2019, No. 315, § 1169; 2019, No. 910, §§ 3118, 3119.

Amendments. The 2019 amendment by No. 315 inserted "rules" in (a)(6)(B).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a)(1); and substituted "division" for "department" throughout the section.

15-57-405. Notification of temporarily closed quarry.

(a) Quarry sites in which operations are only occasionally conducted and in which the operator anticipates future quarry activity can be shut down on a temporary basis. If so, the operator will file a notification of temporarily closed quarry with the Division of Environmental Quality, within thirty (30) days after an operation is closed. Full reclamation will not be required until no further additional quarrying is anticipated or the quarry is exhausted. All operational safeguards, as described in this subchapter, will remain in place as required until the quarry is exhausted. The notification of temporarily closed quarry will contain the following:

(1) Same information as notification of intent to quarry per § 15-57-404(a); and

(2) Right to temporarily close as follows:

"I, operator of [quarry name], located at [legal description in _____ County], have the legal right by deeds, leases, or other instruments to temporarily close this quarry operation until such time as it becomes necessary to reactivate this operation. I will comply with all state and federal laws, rules, and regulations during this temporary closure and inactive status."

(b) When an operator closes a quarry and fails to file a notification of temporarily closed quarry with the division within sixty (60) days, the division may levy a fine of not more than one hundred dollars ($100) per day by citation until said notification is received. The maximum fine is five thousand dollars ($5,000).

(c) If a notification of temporarily closed quarry is not received within ninety (90) days of the issuance of the citation, the division may declare that the quarry is in default and require the operator to reclaim the site as per the bonding and reclamation requirements or the division may forfeit the bond and issue a contract to have the site reclaimed as per the reclamation requirements.

History. Acts 1997, No. 1166, § 5; 2019, No. 315, § 1170; 2019, No. 910, §§ 3120, 3121.

Amendments. The 2019 amendment by No. 315 inserted "rules" in (a)(2).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in the second sentence of (a); and substituted "division" for "department" twice in (b) and (c).

15-57-406. Notification of reactivated quarry.

Prior to resuming operation in a temporarily closed quarry, an operator will notify the Division of Environmental Quality by certified mail with a notification of reactivated quarry. This notification will consist of the resubmittal of the notification of intent along with any modifications required, necessary by changed conditions at the quarry site.

History. Acts 1997, No. 1166, § 6; 2019, No. 910, § 3122.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality".

15-57-407. Notification refiling required.

(a) Every five (5) years all notifications of intent to quarry and of temporarily closed quarry must be refiled with the Division of Environmental Quality by certified mail on or before the operator's anniversary date, with any modifications made necessary by changed conditions in the quarry site, such as changes in the affected acreage, majority ownership of the operator, changes in public roads and man-made structures adjacent to the quarry site, or new technology.

(b) For failure to refile a notification of intent or notification of temporarily closed quarry, divisional enforcement procedures, citations, and fines will be the same as for § 15-57-405.

History. Acts 1997, No. 1166, § 7; 2019, No. 910, § 3123.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a).

15-57-408. Notifications of exhausted quarry.

(a) When a quarry becomes exhausted, the operator will notify the Division of Environmental Quality by registered mail that the quarry is an exhausted quarry. This notification will contain the following:

(1) Updated information as required for the notification of intent to quarry per § 15-57-404(a)(1);

(2) The beginning date of quarry reclamation must be within six (6) months of the notification of exhausted quarry;

(3) The anticipated date reclamation will be completed. All earthwork and revegetation must be completed within the specified time. If revegetation is not approved, the operator will have another year to complete seeding, as required; and

(4) The quarry reclamation map should contain the following:

(A) Identification of all planned roads, water impoundments, final walls, final floors, unconsolidated slopes, quarry rims, areas to be revegetated, berms, other man-made structures, and unaffected areas;

(B) The map shall show planned reclamation according to the requirements of the reclamation plan; and

(C) The affected land acreage to be reclaimed will be shown to the nearest acre.

(b) If the operator fails to notify the division of this change of status, the division will notify the operator by citation. The operator will then have sixty (60) days to file said notification and commence with plans to reclaim the quarry site as per the requirements of this subchapter.

(c) If the operator fails to file notification within the required sixty (60) days, the division may levy a fine of one hundred dollars ($100) per day by citation to the operator until notification is received by the division. The maximum fine is five thousand dollars ($5,000).

(d) If the operator fails to notify the division within sixty (60) days and the fine is in effect, then the division may declare the operator in default and order the operator to begin reclamation as required or the division may forfeit bond and issue a contract to have the site reclaimed as per the reclamation plan.

History. Acts 1997, No. 1166, § 8; 2019, No. 910, §§ 3124, 3125.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in the introductory language of (a); and substituted "division" for "department" throughout the section.

15-57-409. Reclamation of land at exhausted quarry site.

(a) When the quarry is exhausted, the planned reclamation of all affected lands at the quarry site will be completed by the operator, his

or her subcontractor, or by the Division of Environmental Quality once the bond has been forfeited.

(b)(1) The minimum reclaimed condition of the exhausted quarry will be as a lake, pasture, timberland, or wetlands, or a combination thereof. Where preaffected lands consist of natural rock outcrops, floors, walls, and ledges, where no topsoil or minimal spoil exists, post-reclaimed land of approximately the same area may be left for self-revegetation within the total affected land to be reclaimed. Acreage of the preaffected lands will be calculated to the nearest acre. Exhausted highwalls and safety benches may be left for self-reclamation.

(2) All equipment, tools, man-made structures, and debris will be removed from affected lands or disposed of on property in a safe manner by mutual agreement between the operator and the landowner. The agreement will be on file at the operator's offices and sent to the division with notification of exhausted quarry.

(3) If uncovered spoil, earth, or rock formations cause acidic drainage, all acid-forming materials will be covered with at least three feet (3') of spoil and available topsoil, with topsoil in the top one foot (1'), and seeded as required by this subchapter.

(4) Available topsoil and spoil removed during quarrying will be stockpiled for use during reclamation. If either material is not available in quantities necessary for reclamation, then priority will be given to areas with acid-forming materials in subdivision (b)(3) of this section. If contemporaneous reclamation is ongoing, then the operator may reclaim in areas of his or her own discretion. Thickness of spoil may be varied, but in no case will the combined thickness be less than six inches (6″). Spoil and topsoil which are surplus to full reclamation may be disposed of at the discretion of the operator. No topsoil or dirt is required to be hauled from another location to the quarry site.

(5) Lime, fertilizer, and seeding will be completed as necessary to sustain growth over seventy-five percent (75%) of the affected area or a complete reseeding of bald spots will be required.

(6) If revegetation during reclamation is to be accomplished by planting of trees, the planting guideline of the Arkansas Forestry Commission shall be complied with. A fifty-percent coverage is required after two (2) years. Otherwise, bald spots will be replanted.

(7) All erosion control will be covered under the operator's stormwater pollution prevention plan.

(8) Site process water quality, storage, handling, and discharge will be covered under the operator's National Pollutant Discharge Elimination System permit.

(9) Quarry site reclamation must be completed through the first seeding within one (1) year for quarry sites of less than fifty (50) acres, within two (2) years for quarry sites of more than fifty (50) acres and less than one hundred (100) acres, and within three (3) years for quarry sites of more than one hundred (100) acres and less than two hundred (200) acres. This time requirement for sites larger than two hundred (200) acres may be modified, at the discretion of the division, upon agreement with the operator.

(10) If an operator fails to begin reclamation during the first six (6) months after a quarry is exhausted, the division will notify the operator by citation of the above violation. If an operator then fails to begin reclamation within sixty (60) days after receiving the notification, the division may then issue a second citation. The second citation will be accompanied by a fine of not more than fifty dollars ($50.00) per day until reclamation begins. If an operator's reclamation effort does not begin within sixty (60) days of the second citation and the fine is in force for that period, then the division will notify the operator that the operation is in default. The division will then use the proceeds of the operator's forfeited bond to have the quarry site reclaimed as per the reclamation plan.

History. Acts 1997, No. 1166, § 9; 2019, No. 910, §§ 3126-3128.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a); and substituted "division" for "department" throughout (b).

15-57-410. Site safety.

The quarry operator will take the following measures to safeguard the operations for the benefit of neighbors and other citizens and to restrain trespassers from entering onto the quarry or plant site:

(1) One (1) or a combination of the following will be installed around the quarry and plant site to complement natural barriers to trespassing as required:

(A) A minimum four-foot high, four-strand barbed wire fence boundary attached to steel posts;

(B) A five-foot high earth berm or rock berm, or both, with slopes steeper than one and five-tenths to one (1.5:1) and a minimum top width of five feet (5'); and

(C) A protective barrier of boulders, concrete, or other objects capable of discouraging pedestrian or vehicular traffic;

(2) Brightly colored warning signs (blaze orange is recommended) will be installed every three hundred feet (300') in clear view;

(3) Barriers or lockable gates capable of withstanding normal vandalism are to be installed at all quarry site entrances. During temporary closure and after full reclamation of an exhausted quarry, barriers of rock or securely locked gates will be installed at all entrances on safety benches and haul roads so that no traffic or dumping can occur on the affected lands or in the quarry itself;

(4) After January 1, 1998, no active quarry wall will be closer than fifty feet (50') to a public road right-of-way where the quarry's adjacent floor elevation is at or above the elevation of the right-of-way of the public road at the property line. Where active quarry floors are below said right-of-way, quarrying will be permitted only after a vegetated berm a minimum of ten feet (10') high, eight feet (8') wide at the crest, and with one-and-five-tenths-to-one slopes is installed for public safety;

(5) After January 1, 1998, no active quarry wall will be closer than fifty feet (50') from any private property line unless written permission

is given by the adjacent property owner. Permission will be on file at the operator's office and a copy will be sent to the Division of Environmental Quality;

(6) Where truck traffic to and from the quarry site entrance creates a public safety nuisance because of fugitive dust, the operator will take the appropriate measures to treat the roadbed for dust control in the vicinity of the quarry entrance;

(7) Blasting will be regulated under present United States Department of Labor Mine Safety and Health Administration or state labor codes;

(8) Hazardous wastes will be regulated under the present hazardous waste codes;

(9) Active quarry and plant sites will have until January 1, 1998, to comply with the requirements of this section, except for subdivision (6) of this section. Requirements of subdivision (6) of this section are to be in force by July 1, 1997;

(10) If the division finds the operator to be out of compliance with any of the requirements of subdivisions (1)-(3) of this section, a citation will be given to the operator to comply within ninety (90) days. If the operator fails to comply within the ninety-day time requirement or shows no effort to comply, the division may levy by citation a fine of not more than one hundred dollars ($100) per day until the operator complies with said requirements. The maximum fine is five thousand dollars ($5,000); and

(11) Any operator quarrying in violation of subdivisions (4) and (5) of this section will be subject to an immediate assessment of a fine of not more than one hundred dollars ($100) per day or a shut down order by the division, or both. The order will stay in effect at the discretion of the division until the operator is no longer in violation.

History. Acts 1997, No. 1166, § 10; 2019, No. 910, §§ 3129, 3130.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (5); and, in (10) and (11), substituted "division" for "Arkansas Department of Environmental Quality" and "department".

15-57-411. Complaints of violations of this subchapter.

(a) The operator is required to document and respond to complaints by neighbors and citizens as they relate to the requirements of this subchapter. A record of the complaints and responses will be kept on file at the quarry office or company office for a minimum of two (2) years and sent to the Division of Environmental Quality.

(b) Any complaints received by the division as they relate to this subchapter will be forwarded to the operator. The operator's response will be kept on file for future divisional review at the quarry office or the company office for a minimum of two (2) years.

(c) The division shall investigate complaints by neighbors and citizens to determine if violations of this subchapter have occurred.

History. Acts 1997, No. 1166, § 11; 2019, No. 910, § 3131.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a); and substituted "division" for "department" in (b) and (c).

15-57-412. Bond.

(a) In order to assure that all reclamation is completed as required and within a reasonable length of time, the operator shall submit a bond or substitute security used specifically for the quarry described in the legal description of the notification of intent. The bond or substitute security shall be in force prior to the operator commencing a new or reactivated quarry operation and in force for all active quarry operations by January 1, 1998.

(b)(1) As of January 1, 1998, the reclamation bond required for acceptance of an operator's notice of intent to open a quarry, or to reactivate a quarry, will be one thousand one hundred dollars ($1,100) per acre of affected land. The face value of the bond will be evaluated every five (5) years by the operator and a representative of the Division of Environmental Quality.

(2) In the event it is determined that the bond or substitute security is inadequate, the surety will be notified and the bond limits or amount of security will be increased. If the security is determined to be surplus, then the amount required will be decreased.

(c) Bonding or substitute security may be incrementally increased based on the annual acreage to be affected but must be sufficient in total to fund full reclamation as required by this subchapter.

(d) Bonding or substitute security shall be incrementally decreased as reclamation is completed. When final reclamation is completed, the remaining bond or substitute security will be released to the operator.

(e)(1) The operator may submit any of the following three (3) types of bonds or substitute security:

(A) A surety bond;

(B) A collateral bond with supporting collateral consisting of irrevocable letters of credit or certificates of deposit in favor of the division; and

(C) A self bond with an unencumbered right to certain property to be held by the division.

(2) Recommended bond forms shall be provided by the division. A variation of the language in all but the self bond form may be acceptable, provided the requirements of this subchapter and this Code are incorporated and the division approves the language.

(3) In the event self bonding is used, the following conditions apply:

(A) The applicant must use the self bond form provided by the division;

(B) The collateral to be offered must be appraised by a licensed appraiser approved by the operator and the division;

(C) The operator must have unencumbered ownership of the collateral and provide proof of such ownership to the division;

(D) The value of the collateral as bond will be eighty percent (80%) of the fair market value of the collateral as established by the appraiser;

(E) Any collateral that decreases in value due to usage (rolling stock) will be not be acceptable;

(F) In the event the collateral consists of real property, an environmental audit of the area must be provided to the division; and

(G) Where applicable, a lien will be filed against the collateral until the affected area is reclaimed and released by the Arkansas Pollution Control and Ecology Commission.

History. Acts 1997, No. 1166, § 12; 1999, No. 1320, § 2; 2019, No. 910, §§ 3132, 3133.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (b)(1); and substituted "division" for "department" throughout (e).

15-57-413. Hearing.

An operator may request and obtain an adjudicatory hearing and review by the Arkansas Pollution Control and Ecology Commission of any decision by the Director of the Division of Environmental Quality to enforce the provisions of this subchapter, including any action to impose a civil penalty, stop quarrying activities, or forfeit a bond. The decision of the commission shall be final and may be appealed by the operator to the circuit court of the county in which the quarry is located in accordance with the Arkansas Code.

History. Acts 1997, No. 1166, § 13; 2019, No. 910, § 3134.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality".

15-57-414. Distribution of fees, fines, and forfeiture amounts.

(a) The Division of Environmental Quality shall collect fees, fines, and bond forfeiture amounts pursuant to this subchapter.

(b) These revenues, along with gifts, grants, donations, and other funds received under this subchapter, including all interest earned, shall be deposited into the Land Reclamation Fund established by § 15-57-319.

(c) The division shall use these funds pursuant to this subchapter for contract awards for the reclamation of affected lands as required by this subchapter.

(d) When accumulated funds equal the product of ten percent (10%) of the number of acres of affected lands times one thousand dollars ($1,000), surplus funds shall be deposited into the State Treasury as general revenues.

History. Acts 1997, No. 1166, § 14; 2019, No. 910, §§ 3135, 3136.

Amendments. The 2019 amendment substituted "Division of Environmental

Quality" for "Arkansas Department of Environmental Quality" in (a); and substituted "division" for "department" in (c).

CHAPTER 58

THE ARKANSAS SURFACE COAL MINING AND RECLAMATION ACT

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

15-58-102. Legislative findings.

The General Assembly of the State of Arkansas finds, and it is declared that:

(1)(A) The extraction of coal from the earth by surface mining in this state is a significant economic activity, is an integral part of the growth and development of this state, and is important to supply energy to the people of this state.

(B) It is, therefore, essential to the people of this state to ensure the existence of an expanding and economically healthy surface and underground coal mining industry;

(2) The process of surface coal mining must be accomplished in a manner to reduce so far as practicable the adverse social, economic, and

environmental effects of surface mining and to protect the general welfare, health, safety, and property rights of the people of this state;

(3) Because surface coal mining in this state takes place in areas where the terrain, climate, biological, chemical, and other physical conditions are peculiar to this state and because the Division of Environmental Quality is familiar with these conditions, the division has the primary responsibility to develop, issue, and enforce rules for surface mining and reclamation operations in this state pursuant to this chapter and in compliance with applicable federal laws, rules, and regulations;

(4)(A) The United States Congress has enacted the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, which provides for the establishment of a nationwide program to regulate surface coal mining and reclamation and which vests exclusive authority in the United States Department of the Interior over the regulation of surface coal mining and reclamation within the United States. Section 503 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, provides that each state may assume and retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within the state by obtaining approval of a state program of regulation that demonstrates that the state has the capability of carrying out the provisions and meeting the purposes of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87.

(B) Section 503 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, further provides that a state wishing to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within the state must have a state law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87; and

(5)(A) The United States Congress has enacted the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, which provides for the establishment of a nationwide program to promote reclamation of mined areas in the country left without adequate reclamation to be funded by a reclamation fee paid by all surface coal mining operators. Section 402 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, provides that each state may develop a state abandoned mine reclamation program to enable the state to develop and carry out projects for the reclamation of abandoned mines within the state.

(B) The United States Secretary of the Interior will allocate funds to this state under the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, for the purpose of operating the state abandoned mine reclamation program.

(C) Section 405 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, provides that, prior to approval of the state

abandoned mine reclamation plan, the state must have adopted state legislation necessary to carry out the purposes of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87.

History. Acts 1979, No. 134, § 2; A.S.A. 1947, § 52-936; Acts 1999, No. 1164, § 142; 2011, No. 279, § 1; 2019, No. 315, § 1171; 2019, No. 910, § 3137.

Amendments. The 2019 amendment by No. 315, in (3), substituted the first occurrence of "rules" for "regulations" and inserted the second occurrence of "rules".

The 2019 amendment by No. 910, in (3), substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" and "division" for "department".

15-58-103. Declaration of policy.

The General Assembly of the State of Arkansas declares that it is the purpose of this subchapter to:

(1) Assure that the coal supply essential to society's energy requirements and to its economic and social well-being is provided;

(2) Establish a statewide program for surface coal mining and reclamation which is designed to protect society and the environment from the adverse effects of surface coal mining;

(3) Assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances to the land are protected from unregulated surface mining operations;

(4) Assure that the surface mining operations are not conducted where reclamation as required by this subchapter is not feasible;

(5) Assure that surface coal mining operations are so conducted as to protect the environment;

(6) Assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface coal mining operations;

(7) Assure that appropriate procedures are provided for public participation in the development, revision, and enforcement of rules, standards, reclamation plans, or programs established pursuant to this subchapter;

(8) Strike a balance between protection of the environment and agricultural productivity and the state's and the nation's need for coal as an essential source of energy;

(9) Assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within the state by developing and implementing a state program pursuant to the Surface Mining Control and Reclamation Act of 1977, Public Law No. 95-87 which meets all the requirements of section 503 of the Surface Mining Control and Reclamation Act of 1977, Public Law No. 95-87 and which thereby will enable the state to assume such exclusive jurisdiction;

(10) Promote reclamation of mined areas in this state, which were left without adequate reclamation prior to August 3, 1977, and which continue in their unreclaimed condition to substantially degrade the quality of the environment, prevent or damage the beneficial use of the

land or water resources, or endanger the health or safety of the public by developing and implementing a state abandoned mine reclamation program pursuant to the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87 which complies with the requirements for a state abandoned mine reclamation program set forth therein and which shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and of the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and by issuing rules which will supply the legal authority and programmatic capability to perform such work in conformance with the provisions of Title IV of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87; and

(11) Wherever necessary, exercise the full reach of state powers to ensure the protection of the public interest through effective control of surface coal mining and reclamation operations.

History. Acts 1979, No. 134, § 3; A.S.A. 1947, § 52-937; Acts 2019, No. 315, §§ 1172, 1173.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (7) and (10).

15-58-104. Definitions.

As used in this chapter:

(1) "Affected governmental agency" means an agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the surface coal mining operation, or is authorized to develop and enforce environmental standards with respect to that operation;

(2) "Coal" means all forms of coal, including lignite;

(3) "Commission" means the Arkansas Pollution Control and Ecology Commission or any department, commission, bureau, or agency as shall lawfully succeed to the powers and duties of the commission;

(4) "Director" means the executive head and active administrator of the Division of Environmental Quality;

(5) "Division" means the Division of Environmental Quality or any department, bureau, commission, or agency that shall lawfully succeed to the powers and duties of that division;

(6) "Fund" means the Abandoned Mine Reclamation Fund administrated by the United States Secretary of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87. Moneys from the fund may be received by the division through a grant from the United States Secretary of the Interior pursuant to the state abandoned mine reclamation program;

(7) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside

the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement;

(8) "Lands eligible for remining" means those lands that would otherwise be eligible for expenditures under § 15-58-401;

(9) "Operator" means any person, partnership, or corporation engaged in coal mining who removes or intends to remove more than two hundred fifty (250) tons of coal from the earth by coal mining within twelve (12) consecutive calendar months in any one (1) location;

(10) "Permit" means a permit to conduct surface coal mining and reclamation operations issued by the director;

(11) "Person" means an individual, partnership, association, society, joint-stock company, firm, company, corporation, or other business organization;

(12) "Small operator" means an operator whose probable annual production at all locations will not exceed three hundred thousand (300,000) tons of coal per year;

(13) "State abandoned mine reclamation program" means a plan established by the division and approved by the United States Secretary of the Interior pursuant to Title IV of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, to reclaim mined areas of the state which were left without adequate reclamation prior to August 3, 1977;

(14) "State program" means a program established by the division and approved by the United States Secretary of the Interior pursuant to section 503 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, to regulate surface coal mining and reclamation operations on lands within the state;

(15) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of such operations;

(16) "Surface coal mining operations" means:

(A) Activities conducted on the surface of lands in connection with a surface coal mine and surface impacts incident to an underground coal mine. The activities include excavation for the purpose of obtaining coal, including such common methods as contours strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching, or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, the loading of coal at or near the mine site; and

(B) The area upon which activities occur or where activities disturb the natural land surface. The area shall also include any adjacent land the use of which is incidental to those activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of activities and for

haulage, and excavations, working, impoundments, dams, ventilation shafts, entry ways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to these activities;

(17) "Unanticipated event or condition" means an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit; and

(18) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of this chapter or the rules issued pursuant to this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of a permit, this chapter, or the rules issued pursuant to this chapter due to indifference, lack of diligence, or lack of reasonable care.

History. Acts 1979, No. 134, § 4; 1979, No. 647, § 1; A.S.A. 1947, § 52-938; Acts 1993, No. 737, § 1; 1995, No. 500, § 1; 1999, No. 1164, § 143; 2019, No. 315, § 1174; 2019, No. 910, §§ 3138, 3139.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (18).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (4) and (5); substituted "division" for "department" throughout the section; and inserted "United States" twice in (6) and once in (14) [now (13)].

15-58-105. Public agencies, utilities, and corporations.

Any agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government, which proposes to engage in surface coal mining operations which are subject to the requirements of this chapter shall comply with the provisions of this chapter and the rules issued pursuant to this chapter.

History. Acts 1979, No. 134, § 33; A.S.A. 1947, § 52-967; Acts 2019, No. 315, § 1175.

Amendments. The 2019 amendment substituted "rules" for "regulations".

15-58-106. Exempt activities.

This chapter does not apply to any of the following activities:

(1)(A) The mining, surface or otherwise, of any minerals or materials other than coal.

(B) All minerals and materials other than coal, when applicable, shall be regulated according to the Arkansas Open-Cut Land Reclamation Act of 1977 [repealed] or the Arkansas Quarry Operation, Reclamation, and Safe Closure Act, § 15-57-401 et seq.;

(2) The extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him or her;

(3) The extraction of coal as an incidental part of federal, state, or local government-financed highway or other construction under rules established by the Arkansas Pollution Control and Ecology Commission; or

(4) The extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16 ⅔%) of the tonnage of minerals removed for purposes of commercial use or sale or for coal exploration.

History. Acts 1979, No. 134, § 34; A.S.A. 1947, § 52-968; Acts 2011, No. 279, § 2; 2019, No. 315, § 1176.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (3).

Subchapter 2 — Administration

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

15-58-201. Division — Jurisdiction, powers, and duties.

(a) The Division of Environmental Quality is designated as the official agency whose duty it is to establish policies and guidelines, to administer the guidelines contained in this chapter, and to institute other reasonable rules and guidelines as they become necessary pursuant to this chapter. The rules may provide differing terms and provisions for particular conditions, particular mining techniques, types of coal, particular areas of the state, surface mines, and the surface impacts of underground mines or any other differences which appear

relevant and necessary so long as the action taken is consistent with attainment of the general intent and purposes of this chapter.

(b) Exclusive jurisdiction over those aspects of surface coal mining and reclamation operations in this state regulated by the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, shall be vested in the division.

History. Acts 1979, No. 134, § 5; A.S.A. 1947, § 52-939; Acts 1999, No. 1164, § 144; 2019, No. 315, § 1177; 2019, No. 910, § 3140.

Amendments. The 2019 amendment by No. 315, in (a), substituted "rules" for "regulations" in the first sentence and deleted "and regulations" following "rules" in the second sentence.

The 2019 amendment by No. 910 substituted "Division" for "Department" in the section heading; substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a); and substituted "division" for "department" in (b).

15-58-202. Commission — Powers and duties.

(a) The authority shall be vested in the Arkansas Pollution Control and Ecology Commission to establish policies and guidelines and take such other actions as are necessary to ensure the development, administration, and enforcement of a state program which meets the requirements of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, and, in doing so, shall have the following duties and powers:

(1) To adopt, amend, and issue rules in accordance with the procedures set forth herein pertaining to surface coal mining and reclamation operations in accordance with but no more restrictive than the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, consistent with the general intent and purposes of this chapter and consistent with but no more restrictive than the regulations issued by the United States Secretary of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, as required for the state to develop an approved state program and to assume and retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations pursuant to section 503 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87;

(2) To adopt, amend, and issue rules in accordance with the procedures set forth in this subchapter pertaining to the reclamation of abandoned mines in this state in accordance with the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, as required for the state to develop an approved state abandoned mine reclamation program and to assume and retain exclusive jurisdiction over the regulation of abandoned mine reclamation in this state pursuant to Title IV of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87;

(3) To conduct administrative hearings and to perform all necessary functions pursuant thereto and exercise discretionary review pursuant to the provisions of this chapter over all aspects of surface coal mining and reclamation operations performed within this state;

(4) To designate lands unsuitable for all or certain types of surface coal mining in accordance with provisions of this chapter and the rules issued pursuant to this chapter; and

(5) To perform other duties and acts required by and provided for in this chapter or reasonably necessary to carry out the purposes of this chapter or the rules issued pursuant to this chapter.

(b) The commission shall have the authority to promulgate rules to amend the provisions of this chapter when such amendments are permitted by an amendment to the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, subsequent to the enactment of this chapter.

History. Acts 1979, No. 134, §§ 5, 37; A.S.A. 1947, §§ 52-939, 52-971; Acts 1995, No. 500, § 2; 2019, No. 315, § 1178.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (a)(1) and (a)(2); and substituted "rules" for "regulations" in (a)(4), (a)(5), and (b).

15-58-203. Director — Powers and duties.

(a) The authority shall be vested in the Director of the Division of Environmental Quality and such other persons as designated by the director to administer and enforce the provisions of this chapter. The director shall seek the accomplishment of the purposes of this chapter by all practicable and economically feasible methods, and in doing so, shall have the following duties and powers:

(1) To make those expenditures which he or she deems necessary to accomplish the purposes of this chapter;

(2) To issue permits and set permit fees pursuant to the provisions in this chapter;

(3) To conduct settlement conferences pursuant to the provisions in this chapter;

(4) To prepare and require permittees to prepare reports;

(5) To enter on and inspect a surface coal mining operation and all records related thereto which are subject to the provisions of this chapter upon presentation of appropriate identifying credentials;

(6) To issue or modify orders requiring an operator to take actions that are reasonably necessary to comply with this chapter or rules issued pursuant to this chapter;

(7) To issue an order ordering a cessation of surface coal mining or reclamation operations or revoking the permit of an operator who has failed to comply with an order of the director to take action required by this chapter or rules issued pursuant to this chapter; or, in the event the permit is revoked, to cause the operator's performance bond, cash, or collateral securities to be forfeited if it is determined that it is necessary to reclaim the area of land affected by the operator's surface coal mining operation;

(8) To require training, examination, and certification of persons engaging in or directly responsible for blasting or use of explosives in surface coal mining operations;

(9) To receive by gift, grant, donation, or otherwise any sum of money, or assistance from any person or the United States, its agencies, the State of Arkansas, or any agency or political subdivision thereof, for the enactment and enforcement of this chapter and the mining and reclamation of land affected by surface coal mining operations;

(10) To conduct, encourage, request, and participate in studies, surveys, investigations, research, experiments, training, and demonstrations by contract, grant, or otherwise;

(11) To collect and disseminate to the public, information considered reasonable and necessary for the proper enforcement of this chapter;

(12) To employ such officers, agents, employees, and professional personnel, including legal counsel, as the director deems necessary for the performance of his or her powers and duties, and to prescribe the powers and duties and to fix the compensation of officers, agents, employees, and professional personnel;

(13) To contract upon such terms as the director may agree upon for legal, financial, engineering, and other professional services necessary to expedite the conduct of the affairs of the Division of Environmental Quality under the provisions of this chapter;

(14) To enter into cooperative projects or contracts with federal agencies, state boards, agencies, and soil and water conservation districts having expertise for the purposes of obtaining professional and technical services necessary to implement the provisions of this chapter; and to transfer funds to those boards, agencies, or districts;

(15) To enter into a cooperative agreement with the United States Secretary of the Interior to provide for state regulation of surface coal mining and reclamation operations on federal lands within this state;

(16) To represent the state in all matters involving or affecting the interest of the state and its residents relative to the proceedings before any federal agencies, officers, and congressional committees, and in all judicial actions arising out of the proceedings of such agencies, offices, and committees, or in relation thereto, and to appear in the courts and before agencies of this state or in other states in order to carry out the purposes of this chapter;

(17) To commence and prosecute all forms of legal actions as may be necessary to carry out the purposes of this chapter, including legal actions against the United States Secretary of the Interior and the United States Office of Surface Mining Reclamation and Enforcement;

(18) To establish for the purpose of avoiding duplication a process for coordinating inspections and the review and issuance of permits for surface coal mining and reclamation operations with any other federal or state permit process applicable to the proposed operations;

(19) To submit to the United States Secretary of the Interior a state abandoned mine reclamation program, annual projects which will carry out the purpose of the state abandoned mine reclamation program, and other reports as the United States Secretary of the Interior may require or as may be necessary in the administration of the state abandoned mine reclamation program; and to submit to the United States Con-

gress annual reports on January 1 of each year on operations under the state abandoned mine reclamation program, together with recommendations as to further uses of the fund;

(20) To apply for, receive, and segregate the state abandoned mine reclamation funds into a special account, to spend the moneys in accordance with the provisions of this chapter and the rules issued by the Arkansas Pollution Control and Ecology Commission, and to prepare and submit to the United States Secretary of the Interior information as required in the administration of the state abandoned mine reclamation program;

(21) To sell land acquired pursuant to the state abandoned mine reclamation program by public sale under a system of competitive bidding at not less than fair market value and in accordance with rules issued by the commission;

(22) To construct and operate plants for the control and treatment of water pollution resulting from mine drainage; and

(23) To perform other duties and acts required by and provided for in this chapter or reasonably necessary to carry out the purposes of this chapter or the rules issued pursuant to this chapter.

(b) The director shall have the right to grant variances to the requirements of this chapter and the rules issued pursuant to this chapter in the issuance of any permit pursuant to this chapter or, upon application of a permittee to amend an issued permit to allow a variance when variances are permitted by an amendment to the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, subsequent to the enactment of this chapter.

History. Acts 1979, No. 134, §§ 5, 37; A.S.A. 1947, §§ 52-939, 52-971; Acts 1999, No. 1164, § 145; 2019, No. 315, §§ 1179-1182; 2019, No. 910, §§ 3141, 3142.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (a)(6) and (a)(7); and substituted "rules" for "regulations" throughout (a) and (b).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in the introductory language of (a) and in (a)(13).

15-58-204. Adoption of rules.

(a) Before the adoption, amendment, or repeal of any rule, the Arkansas Pollution Control and Ecology Commission shall give public notice and the opportunity for a public hearing under §§ 15-58-207 and 15-58-208.

(b)(1) If the commission finds that imminent peril to the public health, safety, or welfare requires adoption of a rule upon less than twenty (20) days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it may choose, to adopt an emergency rule.

(2) The rule may be effective for no longer than one hundred eighty (180) days.

(c)(1) A person has the right to petition for the issuance, amendment, or repeal of any rule.

(2) Within ninety (90) days after submission of a petition, the commission either shall deny the petition, stating in writing its reasons for the denial, or shall initiate rulemaking proceedings in accordance with subsection (a) of this section.

(d)(1) The commission shall file with the Secretary of State a certified copy of each rule adopted by it.

(2) The Secretary of State shall keep a permanent register of the rule open to public inspection.

(3)(A) Each rule shall be effective twenty (20) days after filing, unless a later date is specified by law or in the rule.

(B) However, an emergency rule may become effective immediately upon filing or at a stated time less than twenty (20) days after filing if the commission finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare.

(C) The commission's finding and a brief statement of the reasons shall be filed with the rule.

(D) The commission shall take appropriate measures to make emergency rules known to the persons who may be affected by them.

(e) A rule shall not be valid unless adopted and filed in substantial compliance with this chapter.

History. Acts 1979, No. 134, § 27; A.S.A. 1947, § 52-961; Acts 2011, No. 279, § 3; 2019, No. 315, § 1183.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in the section heading; deleted "or regulation" following "rule" throughout the section; deleted "or regulation itself" following "rule" in (3)(A); and deleted "or regulations" following "rules" in (3)(D).

15-58-205. Inspections.

(a) The Director of the Division of Environmental Quality shall require such monitoring and reporting, shall cause to be made such inspections of any surface coal mining and reclamation operations, shall require the maintenance of such signs and markers, and shall take such other actions as are necessary to administer, enforce, and evaluate the administration of this chapter and to meet the state program requirements. For these purposes, the director or his or her authorized representatives, upon presentation of appropriate identifying credentials, shall have a right of entry to, upon, or through any surface coal mining and reclamation operations and, at reasonable times and without delay, may have access to and copy any records and inspect any monitoring equipment or method of operation required under this chapter or the rules issued pursuant to this chapter.

(b) The Arkansas Pollution Control and Ecology Commission shall issue rules which provide for informing the operator of violations detected by an inspector, for making public all inspection and monitoring reports and other records and reports adequate to enforce the requirements of and to carry out the terms and purpose of this chapter. The rules shall also provide at a minimum for inspections without prior

notice to the permittee or his or her agents or employees, except for necessary on-site meetings with the permittee, on an irregular basis averaging not less than one (1) partial inspection per month and one (1) complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by the permit.

(c)(1) Any person who is, or may be, adversely affected by a surface coal mining operation may notify the director or any representative of the director in writing of any violation of this chapter which he or she has reason to believe exists at the surface mining site.

(2) Any person who is or may be adversely affected by a surface coal mining operation may notify the director or the commission of any failure on behalf of the Division of Environmental Quality to make proper inspections, after which the director, the commission, or their authorized representatives shall determine whether adequate and complete inspections have been made.

(3) The commission shall by rule establish procedures ensuring that adequate and complete inspections have been made and for the review of reports from interested persons. The rules shall provide that the interested persons are furnished a written statement of the reasons for the final disposition of the matter.

History. Acts 1979, No. 134, § 16; 1979, No. 647, § 3; A.S.A. 1947, § 52-950; Acts 1999, No. 1164, § 146; 2019, No. 315, §§ 1184, 1185; 2019, No. 910, §§ 3143, 3144.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (a), (b), and (c)(3); and substituted "rule" for "regulation" in (c)(3).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a) and (c)(2).

15-58-206. Prohibition on enforcement personnel having financial interest.

(a) No person performing any function or duty under this chapter shall have a direct or indirect financial interest in any underground or surface coal mining operation. Whoever knowingly violates the provisions of this subsection shall, upon conviction, be punished by a fine of not more than two thousand five hundred dollars ($2,500), or by imprisonment of not more than one (1) year, or by both.

(b) The Arkansas Pollution Control and Ecology Commission shall publish rules to establish methods by which the provisions of this section will be monitored and enforced, including appropriate provisions for the persons to file for the Director of the Division of Environmental Quality's review, statements, and supplements thereto concerning any financial interest which may be affected by this section.

(c) Any member of the commission who has a direct or indirect financial interest in an underground or surface coal mining operation may continue to serve on the commission but shall abstain from participating in any matter that relates to underground or surface coal mining operations.

History. Acts 1979, No. 134, § 17; A.S.A. 1947, § 52-951; Acts 2019, No. 315, § 1186.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (b).

15-58-207. Public hearing — Procedures.

(a) The Director of the Division of Environmental Quality or the Arkansas Pollution Control and Ecology Commission shall give public notice of each of the following pending, proposed, or requested actions:

(1) The director, upon receipt of any completed application for an initial or revised permit or renewal under §§ 15-58-502 — 15-58-508;

(2) The director, upon receipt of any request by an operator for a variance or amendment to an issued permit under §§ 15-58-502 — 15-58-508;

(3) The commission, upon receipt of any proposal for the designation of lands as unsuitable for surface mining under § 15-58-501;

(4) The commission, upon receipt of any proposal for the use of land acquired pursuant to the state abandoned mine reclamation program; or

(5) The commission, in any rulemaking proceeding under § 15-58-204.

(b) Notice shall be circulated in accordance with the rules issued by the commission to inform interested and potentially interested persons of the pending action.

(c)(1) Interested persons shall be afforded a period of not less than thirty (30) days after the last publication of the above notice to submit written objections or comments.

(2) Comments and objections shall be immediately transmitted to the applicant or permittee and shall be made available to the public.

(3) If a public hearing is requested by an interested person on or before ten (10) days of receipt of the objections and in accordance with the rules issued by the commission, public notice shall be given in accordance with the rules issued by the commission.

(4) A public hearing shall be held for the purpose of receiving relevant evidence.

(d) Any person shall be permitted to submit oral or written statements concerning the subject matter of the public hearing, to call witnesses who may present oral statements, and to present recommendations as to an appropriate decision.

(e)(1) An electronic or stenographic record shall be made of the hearing, unless waived by all parties.

(2) All written statements and similar data offered in evidence, subject to exclusion by the examiner for reasons of redundancy, shall be received in evidence and shall constitute part of the record.

(f) If a public hearing is held under this section, the director or the commission shall grant or deny, in whole or in part, the requested or proposed action and shall give public notice of its decision within sixty (60) days of the hearing.

(g)(1) If there has been no public hearing held pursuant to this section, the director or the commission shall grant or deny, in whole or

in part, the requested or proposed action within a reasonable time and in accordance with rules issued by the commission.

(2) Parties shall be notified by mail with a copy of the decision.

(3) Public notice shall be given of the decision in accordance with the rules issued by the commission.

(h) Within thirty (30) days of the public notice of the final decision of the director or the commission, any person with an interest which is or may be adversely affected may request review of the reasons for the final determination of the director or the commission in accordance with this chapter.

History. Acts 1979, No. 134, § 28; A.S.A. 1947, § 52-962; Acts 2011, No. 279, § 4; 2019, No. 315, §§ 1187-1189; 2019, No. 910, § 3145.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" throughout the section.

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in the introductory language of (a).

15-58-208. Public hearing — Examiners.

(a) For the purpose of receiving and responding to written comments and objections and for presiding at a public hearing, the Arkansas Pollution Control and Ecology Commission or the Director of the Division of Environmental Quality may designate one (1) or more examiners.

(b) An examiner may:

(1)(A) Set the time and location of the public hearing.

(B) Public notice of the information shall be circulated in accordance with rules issued by the commission;

(2) Receive all information submitted pursuant to the pending action and permit or deny cross-examination of witnesses;

(3) Recommend denial or approval, in whole or in part, of the proposed or requested action;

(4) Maintain order at the public hearing;

(5) Generally guide the course of the public hearing; and

(6) Arrange with the applicant, upon request of any party, access to the mining area for the purpose of gathering information relevant to the proceeding.

History. Acts 1979, No. 134, § 28; A.S.A. 1947, § 52-962; Acts 2011, No. 279, § 5; 2019, No. 315, § 1190; 2019, No. 910, § 3146.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (b)(1)(B).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a).

15-58-209. Adjudicatory hearing — Application for review.

(a) A permittee or any person having an interest which is, or may be, adversely affected by the following may apply to the Arkansas Pollution

Control and Ecology Commission for an adjudicatory review of the specified determination, request, notice, order, or decision:

(1) A final determination regarding the amount of a lien imposed upon land reclaimed pursuant to § 15-58-404;

(2) A final determination to issue or deny an initial or revised permit or renewal thereof, or to amend or vary the terms of a permit pursuant to § 15-58-207, § 15-58-208, or §§ 15-58-502 — 15-58-508 if a legislative public hearing was held;

(3) A request by an operator for reduction or release of performance bond pursuant to § 15-58-509;

(4) Any notice of violation, cessation order, or order to show cause issued pursuant to §§ 15-58-301 — 15-58-303;

(5) The assessment of a civil penalty pursuant to § 15-58-307;

(6) Any other final order or decision of the commission, the Director of the Division of Environmental Quality, or their authorized representatives for which review is not otherwise provided in this chapter; or

(7) By any modification, vacation, or termination of the determination, request, notice, order, or decision.

(b) Application for review must be made within thirty (30) days of official notification of the action taken in subsection (a) of this section or within thirty (30) days after the director or his or her authorized agent issues his or her decision pursuant to the informal mine site hearing provided in § 15-58-301(c) and § 15-58-302 as determined in rules issued by the commission.

History. Acts 1979, No. 134, § 29; 1979, No. 647, § 10; A.S.A. 1947, § 52-963; Acts 2019, No. 315, § 1191.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (b).

15-58-210. Adjudicatory hearing — Presiding officers.

(a) The following persons shall preside at an adjudicatory public hearing:

(1) One (1) or more members of the Arkansas Pollution Control and Ecology Commission; or

(2) One (1) or more examiners or referees designated by the commission or the commission's administrative law judge.

(b) All presiding officers and all officers participating in decisions shall conduct themselves in an impartial manner and may at any time withdraw if they deem themselves disqualified. No examiner may participate in a proceeding in which he or she has participated as or on behalf of the charging party in such proceeding. Any party may file an affidavit of personal bias or disqualification, which shall be ruled on by the commission and granted if timely, sufficient, and filed in good faith.

(c) Presiding officers at a public hearing shall have power:

(1) To set the time and place for the public hearing in accordance with rules issued by the commission;

(2) To issue subpoenas for the attendance and testimony of witnesses and the production of documents or things and to issue the subpoena forthwith on the written application by any party therefor;

(3) To administer oaths and affirmations and permit cross-examination;

(4) To take evidence, including, but not limited to, inspections of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity;

(5) To maintain order;

(6) To rule upon all questions arising during the course of a hearing or proceeding;

(7) To permit discovery by deposition or otherwise;

(8) To hold conferences for the settlement or simplification of issues;

(9) To grant stays or temporary relief under conditions they prescribe in accordance with rules issued by the commission pursuant to this chapter;

(10) To recommend a final adjudicatory decision to the commission or, if the commission so designates, to issue a final adjudicatory decision which shall be the decision of the commission; and

(11) Generally to regulate and guide the course of the pending proceeding.

History. Acts 1979, No. 134, § 29; 1979, No. 647, § 10; A.S.A. 1947, § 52-963; Acts 2015, No. 838, § 7; 2019, No. 315, §§ 1192, 1193.

Amendments. The 2015 amendment added "or the commission's administrative law judge" in (a)(2).

The 2019 amendment substituted "rules" for "regulations" in (c)(1) and (c)(9).

15-58-211. Adjudicatory hearing — Procedures generally.

(a) In any adjudicatory public hearing, if a person refuses to respond to a subpoena, refuses to take the oath or affirmation as a witness, or thereafter refuses to be examined, the Arkansas Pollution Control and Ecology Commission, its authorized representative, or the presiding officer of the hearing may apply to any court of general jurisdiction in the county where the proceedings were held or are being held for an order directing that person to take the requisite action. The court shall issue the order in its discretion. Should any person willfully fail to comply with an order so issued, the court shall punish him or her as for contempt.

(b) Opportunity shall be afforded all parties at a public hearing to respond and present evidence and argument on all issues involved.

(c) Nothing in this chapter shall prohibit disposition of the matter through an informal conference before the Director of the Division of Environmental Quality if all parties agree, or disposition by stipulation, settlement, consent order, or default.

(d) The record of a public hearing required by this section shall include:

(1) All pleadings, motions, and intermediate rulings;

(2) Evidence received or considered, including, on request of any party, a transcript of oral proceedings or any part thereof;

(3) A statement of matters officially noticed;

(4) Offers of proof, objections, and rulings thereon;

(5) Proposed findings and exceptions thereto; and

(6) All staff and presiding officer memoranda or data submitted to the presiding officer in connection with his or her consideration of the case.

(e) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(f) Any person compelled to appear at a public hearing shall have the right to be accompanied and advised by counsel. Parties shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(g) Except as otherwise provided by law, the person contesting a notice, order, or decision in an adjudicatory public hearing shall have the burden of proof. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted of record. When a hearing will be expedited and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form.

(h) Official notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the commission's specialized knowledge. Parties shall be notified of material so noticed, including any staff memoranda or data, and shall be afforded a reasonable opportunity to show to the contrary.

(i) A final decision or order of the commission shall be issued within thirty (30) days after the adjudicatory public hearing held and shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be served either personally or by mail with a copy of any decision or order.

(j) The final order of assessment of a civil penalty whether by order of the commission after hearing, or by order of the director if the operator fails to petition for review of the assessment within the time provided herein shall constitute, upon filing the order with the circuit clerk of the appropriate county, a judgment against the operator which may be recovered in any manner provided by law for collection of a judgment.

(k) Any party adversely affected by the final order or decision of the commission may obtain judicial review of that decision in accordance with § 15-58-212.

History. Acts 1979, No. 134, § 29; 1979, No. 647, § 10; A.S.A. 1947, § 52-963; Acts 2019, No. 910, § 3147.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (c).

15-58-212. Judicial review.

(a) Any person who participated in the administrative proceeding may institute proceedings for judicial review by filing a petition in the Pulaski County Circuit Court or in the circuit court of any county in which the involved surface coal mining operation is located within thirty (30) days after service upon petitioner of the Arkansas Pollution Control and Ecology Commission's final decision if that person is aggrieved by:

(1) The final order or the decision rendered in an adjudicatory hearing under §§ 15-58-209 — 15-58-211;

(2) The final decision of the commission on a petition to designate lands unsuitable for all or certain types of surface coal mining pursuant to §§ 15-58-207 and 15-58-208;

(3) The final decision of the commission regarding the use of lands under the State Abandoned Mine Reclamation Program pursuant to §§ 15-58-207 and 15-58-208; or

(4) The promulgation of rules by the commission pursuant to §§ 15-58-207 and 15-58-208.

(b) Copies of the petition shall be served upon the agency and all other parties of record by personal delivery or by mail.

(c) The court, in its discretion, may permit other interested persons to intervene.

(d) Any petition for judicial review of the assessment of a civil penalty shall be accompanied by a bond, with sufficient surety in the amount of the penalty, plus interest at the rate of ten percent (10%) per annum.

(e) The filing of the petition shall not automatically stay enforcement of the commission's action, but the reviewing court may do so if:

(1) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(2) The person requesting the relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding; and

(3) The relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

(f) Within thirty (30) days after service of the petition or within such further time as the court may allow, but not exceeding an aggregate of ninety (90) days, the commission shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs.

The court may require or permit subsequent corrections or additions to the record.

(g) If, before the date set for hearing, application is made to the court for leave to present additional evidence and the court finds that the evidence is material and that the evidence could not with reasonable diligence have been discovered and produced at the administrative hearing, the court may order that the additional evidence be taken before the commission upon such conditions as may be just. The commission may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(h) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the commission, not shown in the record, testimony may be taken before the court. The court shall, upon request, hear oral argument and receive written briefs.

(i) The court may affirm the decision of the commission or remand the case for further proceedings. It may reverse or modify the decision if the substantial rights of the petitioner have been prejudiced because the commission's findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions or the provisions of this chapter;

(2) In excess of the authority granted in this chapter;

(3) Not supported by substantial evidence of record; or

(4) Arbitrary, capricious, or characterized by abuse of discretion.

History. Acts 1979, No. 134, § 30; A.S.A. 1947, § 52-964; Acts 2019, No. 315, § 1194.

Amendments. The 2019 amendment deleted "or regulations" following "rules" in (a)(4).

Subchapter 3 — Violations and Penalties

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and

operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

15-58-301. Violations not causing imminent danger or harm — Cessation order.

(a) If the Director of the Division of Environmental Quality or his or her authorized representative determines on the basis of an inspection or other available information that a permittee is in violation of a requirement of this chapter or of the rules issued pursuant to this chapter or a permit condition required by this chapter or the rules issued pursuant to this chapter but the violation does not create an imminent danger to the health or safety of the public or is not causing or reasonably expected to cause significant imminent environmental harm to land, air, or water resources, the director or his or her authorized representative shall issue a notice of violation to the permittee or his or her agent fixing a reasonable time, but not more than ninety (90) days, for the abatement of the violation in accordance with the procedures set out in rules issued by the Arkansas Pollution Control and Ecology Commission pursuant to this chapter.

(b) If, on expiration of the period of time as originally set in the notice of violation for abatement of the violation, or as subsequently extended, for good cause shown, and on written findings of the director or his or her authorized representative, the director or his or her authorized agent finds that the violation has not been abated, he or she shall immediately issue a cessation order for surface mining operations in accordance with the procedures set out in rules issued by the commission pursuant to this chapter on that portion of the area relevant to the violation.

(c) The cessation order shall remain in effect until the director or his or her authorized agent determines that the violation has been abated or until modified, vacated, or terminated by the director or his or her authorized agent. The cessation order shall expire within thirty (30) days of actual notice to the operator unless an informal hearing is held in accordance with rules issued by the commission at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of the public hearing.

(d) The operator or any person adversely affected by the issuance of a cessation order or a modification, vacation, or termination of the order may, within thirty (30) days after the director or his or her authorized agent issues his or her decision pursuant to the informal hearing at the mine site, request an adjudicatory public hearing pursuant to §§ 15-58-209 — 15-58-211.

(e) The cessation order issued by the director or his or her authorized agent under this section shall designate the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary abatement measures.

History. Acts 1979, No. 134, § 22; 1979, No. 647, § 6; A.S.A. 1947, § 52-956; Acts 1999, No. 1164, § 147; 2019, No. 315, § 1195; 2019, No. 910, § 3148.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (a) through (c).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a).

15-58-302. Conditions, practices, and violations causing imminent danger or harm — Cessation order.

(a) If the Director of the Division of Environmental Quality or his or her authorized representative determines, on the basis of an inspection or other available information, that a condition or practice exists or that a permittee is in violation of a requirement of this chapter or of the rules issued pursuant to this chapter or of a permit condition required by this chapter or the rules issued pursuant to this chapter, and that this condition, practice, or violation also creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources, the director or his or her authorized representative or agent shall immediately issue a cessation order in accordance with the procedures set out in rules issued by the Arkansas Pollution Control and Ecology Commission pursuant to this chapter requiring the immediate termination of all surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation.

(b) The cessation order shall remain in effect until the director or his or her authorized representative determines that the condition, practice, or violation has been abated or until the order has been modified, vacated, or terminated by the director or his or her authorized representative. The cessation order shall expire within thirty (30) days of actual notice to the operator unless an informal hearing is held in accordance with rules issued by the commission at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of the public hearing.

(c) The operator or any person adversely affected by the issuance of a cessation order or a modification, vacation, or termination of the order may, within thirty (30) days after the director or his or her authorized agent issues his or her decision pursuant to the informal hearing at the mine site request an adjudicatory public hearing pursuant to §§ 15-58-209 — 15-58-211.

(d) Where the director or his or her authorized representative finds that the ordered cessation of surface coal mining and reclamation operations or any portion thereof will not completely abate the immi-

nent danger to health or safety of the public or the significant imminent environmental harm to land, air, or water resources, the director or his or her authorized representative shall, in addition to and as part of the cessation order, impose affirmative obligations on the operator requiring him or her to take whatever steps are deemed necessary to abate the imminent danger of the significant environmental harm.

History. Acts 1979, No. 134, § 23; 1979, No. 647, § 7; A.S.A. 1947, § 52-957; Acts 2019, No. 315, § 1196; 2019, No. 910, § 3149.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" throughout (a) and (b).

The 2019 amendment by No. 910 substituted "Director of the Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a).

15-58-303. Pattern violations — Order to show cause.

(a) On the basis of an inspection, if the Director of the Division of Environmental Quality or his or her authorized agent has reason to believe that a pattern of violations of any requirements of this chapter or the rules issued pursuant to this chapter or any permit conditions required by this chapter or by the rules issued pursuant to this chapter exists or has existed and if the director or his or her authorized agent also finds that these violations are caused by the unwarranted failure of the permittee to comply with requirements of this chapter or permit conditions or that the violations are willfully caused by the permittee, the director or his or her authorized agent shall issue to the permittee forthwith an order to show cause as to why the permit should not be suspended or revoked in accordance with the procedures set out in rules issued by the Arkansas Pollution Control and Ecology Commission pursuant to this chapter.

(b) The order to show cause shall set a time and place for a public hearing to be held pursuant to §§ 15-58-209 — 15-58-211.

(c) On failure of a permittee to show cause why the permit should not be suspended or revoked, the commission or its authorized representative shall promptly suspend or revoke the permit.

History. Acts 1979, No. 134, § 24; A.S.A. 1947, § 52-958; Acts 2019, No. 315, § 1197; 2019, No. 910, § 3150.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" throughout (a).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a).

15-58-304. Violating a condition of a permit or order — Criminal penalties.

(a) Any person who willfully and knowingly violates a condition of a permit issued under this chapter or fails or refuses to comply with an order authorized by §§ 15-58-301 — 15-58-303 or any order incorporated in a final decision issued by the Arkansas Pollution Control and

Ecology Commission or its authorized representative pursuant to this chapter and the rules issued pursuant to this chapter or any person engaging in surface coal mining operations without a permit issued under this chapter shall be guilty of a misdemeanor and may be upon conviction punished by a criminal penalty of not more than ten thousand dollars ($10,000) or by imprisonment for not more than one (1) year, or by both. Each day during which violation or noncompliance exists shall be deemed to be a separate violation.

(b) If a corporate permittee violates a condition of a permit issued under this chapter or fails or refuses to comply with an order issued pursuant to §§ 15-58-301 — 15-58-303 or any order incorporated in a final decision issued by the commission or its authorized representative pursuant to this chapter and the rules issued pursuant to this chapter, a director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be guilty of a misdemeanor and upon conviction may be punished by a criminal penalty of not more than ten thousand dollars ($10,000) or by imprisonment for not more than one (1) year or by both. Each day during which the violation or noncompliance exists shall be deemed to be a separate violation.

History. Acts 1979, No. 134, §§ 19, 20; 1979, No. 647, § 5; 1981, No. 328, § 1; A.S.A. 1947, §§ 52-953, 52-954; Acts 2019, No. 315, § 1198.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a) and (b).

15-58-305. Interfering with the director or his or her agents — Criminal penalties.

Any person who shall, except as permitted by law, willfully resist, prevent, impede, or interfere with the Director of the Division of Environmental Quality or any of his or her authorized representatives in the performance of duties pursuant to this chapter shall be guilty of a misdemeanor and may be punished upon conviction by a criminal penalty of not more than five thousand dollars ($5,000) or by imprisonment for not more than one (1) year, or by both.

History. Acts 1979, No. 134, § 19; 1979, No. 647, § 5; 1981, No. 328, § 1; A.S.A. 1947, § 52-953; Acts 2019, No. 910, § 3151.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality".

15-58-307. Civil penalties generally.

(a) Any person who violates any permit condition or who violates any other provision of this chapter or the rules issued pursuant to this chapter may in accordance with the rules issued by the Arkansas Pollution Control and Ecology Commission be assessed a civil penalty by the commission, except that if such violation leads to the issuance of a cessation order, the civil penalty shall be assessed. The penalty shall not exceed five thousand dollars ($5,000) for each violation and shall be

based on a schedule which the commission shall issue by rule. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments.

(b) In determining the amount of any penalty to be assessed, consideration shall be given:

(1) To the person's history of previous violations at the particular surface coal mining operation;

(2) To the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public;

(3) To whether the person was negligent; and

(4) To the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of the violation.

(c) Any operator who fails to complete the corrective measures designated in a notice of violation or a cessation order within the period designated for correction, which period shall not end until the entry of a final order by the commission if administrative review proceedings are initiated, and the presiding officer orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the operator will suffer irreparable loss or damage from the application of those requirements, or until the entry of a final order of the circuit court, in the case of any judicial review proceedings wherein the court orders suspension of the abatement requirements of the citation, shall, in accordance with rules issued by the commission, be assessed a civil penalty of not less than seven hundred fifty dollars ($750) for each day during which such failure continues.

(d) No civil penalties may be assessed until the person charged with the violation has been given the opportunity for a public hearing pursuant to §§ 15-58-209 — 15-58-211. All civil penalties shall be deposited into the Surface Coal Mining Operation Fund established in § 15-58-508 and shall be used only for the purposes designated for surface coal mining operation funds in §§ 15-58-502 — 15-58-508.

History. Acts 1979, No. 134, § 18; 1979, No. 647, § 4; A.S.A. 1947, § 52-952; Acts 2019, No. 315, §§ 1199, 1200.

Amendments. The 2019 amendment substituted "rules" for "regulations" twice in the first sentence of (a) and in (c); and substituted "rule" for "regulation" in the second sentence of (a).

15-58-308. Civil actions — Injunctions, etc.

(a) The Arkansas Pollution Control and Ecology Commission or the Director of the Division of Environmental Quality may request the Attorney General or an attorney designated by the director to institute without bond or other undertaking a civil action for relief against a permittee or any person engaging in surface coal mining operations without a permit, including an injunction, restraining order, or any other appropriate order in the county in which any part of the surface coal mining and reclamation operation involved is located, or in the

county in which the permittee has his or her principal office. No liability whatsoever shall accrue to the commission, the director, or their authorized representatives on taking any actions pursuant to this section.

(b) The civil action may be instituted whenever the person or his or her agent:

(1) Violates or fails or refuses to comply with any order or decision issued by the director or his or her authorized representative under this chapter or under the rules issued pursuant to this chapter;

(2) Interferes with, hinders, or delays the director or his or her authorized representatives in carrying out the provisions of this chapter or the rules issued pursuant to this chapter;

(3) Refuses to permit inspection of the mine by the authorized representative;

(4) Refuses to furnish any information or report requested by the director in furtherance of the provisions of this chapter or the rules issued pursuant to this chapter; or

(5) Refuses to permit access to, and copying of, records the director determines necessary to carry out the provisions of this chapter or the rules issued pursuant to this chapter.

History. Acts 1979, No. 134, § 25; 1979, No. 647, § 8; A.S.A. 1947, § 52-959; Acts 2019, No. 315, § 1201; 2019, No. 910, § 3152.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" throughout (b).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in the first sentence of (a).

15-58-309. Right of private action.

(a) Any person having an interest which is or may be adversely affected may commence a civil action on his or her own behalf to compel compliance with this chapter or the rules issued pursuant to this chapter:

(1) Against the State of Arkansas or any other state instrumentality or agency which is alleged to be in violation of the provisions of this chapter or of any rule, order, or permit issued pursuant thereto, or against any other person who is alleged to be in violation of any rule, order, or permit issued pursuant to this chapter; or

(2) Against the Director of the Division of Environmental Quality or the Arkansas Pollution Control and Ecology Commission where there is alleged a failure of the director or the commission to perform any act or duty under this chapter which is not discretionary with the director or with the commission.

(b) No action may be commenced:

(1) Under subdivision (a)(1) of this section:

(A) Prior to sixty (60) days after the plaintiff has given notice in writing of the violation:

(i) To the director;

(ii) To the Attorney General; and

(iii) To any alleged violator; or

(B) If the director has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this chapter, or any rule, order, or permit issued pursuant to this chapter, but in any such action any person may intervene as a matter of right; or

(2) Under subdivision (a)(2) of this section prior to sixty (60) days after the plaintiff has given notice in writing of the action to the director in such manner as the commission shall by rule prescribe, or to the commission, except that the action may be brought immediately after notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(c)(1) Any action respecting a violation of this chapter or the rules thereunder may be brought only in the Pulaski County Circuit Court if the action is filed against the State of Arkansas, the commission, the director, or any other state instrumentality or agency, and in Pulaski County or in the county in which the greater part of the surface coal mining operation complained of is located if the action is filed against any other person.

(2) In any action under this section, the director, the commission, or the Division of Environmental Quality, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation, including attorney and expert witness fees, to any party whenever the court determines the award is appropriate. If a temporary restraining order or preliminary injunction is sought, the court may require the filing of a bond or equivalent security, provided that no bond shall be required if the temporary restraining order or preliminary injunction is sought by the director, the commission, or the division.

(e) Nothing in this section shall restrict any right which any person or class of persons may have under any statute or common law to seek enforcement of any of the provisions of this chapter and the rules thereunder or to seek any other relief, including relief against the director, the commission, or the division.

(f) Any person who is injured in his or her person or property through the violation by any operation of any rule, order, or permit issued pursuant to this chapter may bring an action for damages, including reasonable attorney and expert witness fees only in the judicial district in which the surface coal mining operation complained of is located. Nothing in this subsection shall affect the rights established by or limits imposed under the Workers' Compensation Law, § 11-9-101 et seq.

History. Acts 1979, No. 134, § 32; A.S.A. 1947, § 52-966; Acts 1999, No. 1164, § 148; 2019, No. 315, §§ 1202-1206; 2019, No. 910, §§ 3153-3155.

Amendments. The 2019 amendment by No. 315, throughout the section, substituted "rules" for "regulations" and deleted "regulation" following "rule"; and

substituted "rule" for "regulation" in (b)(2).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a)(2) and (c)(2); and substituted "division" for "department" in (d) and (e).

Subchapter 4 — State Abandoned Mine Reclamation Program

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

15-58-401. Lands eligible.

(a) Lands and water eligible for reclamation or drainage abatement expenditures under this chapter are those which were mined for coal or which were affected by the mining, wastebanks, coal processing, or other coal mining processes and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under federal or other state laws.

(b) Notwithstanding subsection (a) of this section, lands and water similarly affected by coal mining or other mining processes and abandoned or left in an inadequate reclamation status after August 3, 1977, are also eligible for reclamation or drainage abatement expenditures under this chapter if the Director of the Division of Environmental Quality makes either of the following findings:

(1) A finding that the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before November 21, 1980, and that any funds for reclamation or abatement which are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site; or

(2) A finding that the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before November 5, 1990, and the surety of the mining operator became

insolvent during the period, and, as of March 1, 1995, funds immediately available from proceedings relating to that insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site.

(c)(1) In determining which sites to reclaim pursuant to subsection (b) of this section, the director shall follow the priorities stated in § 15-58-402(1) and (2).

(2) The director shall ensure that priority is given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a community.

History. Acts 1979, No. 134, § 6; A.S.A. 1947, § 52-940; Acts 1993, No. 209, § 1; 1993, No. 371, § 1; 1995, No. 500, § 5; 2019, No. 910, § 3156.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in the introductory language of (b).

15-58-402. State priorities.

Expenditure of moneys from the fund on lands and water eligible under § 15-58-401 for the purposes of this chapter shall reflect the following priorities in the order stated:

(1) "Priority I" includes the protection of public health, safety, and property from extreme danger of adverse effects of coal mining practices, including the restoration of land and water resources and the environment that:

(A) Have been degraded by the adverse effects of coal mining practices; and

(B) Are adjacent to a site that has been or will be addressed to protect public health, safety, and property from extreme danger of adverse effects of coal mining practices;

(2) "Priority II" includes the protection of public health and safety from adverse effects of coal mining practices, including restoration of land and water resources and the environment that:

(A) Have been degraded by the adverse effects of coal mining practices; and

(B) Are adjacent to a site that has been or will be addressed to protect the public health and safety from the adverse effects of coal mining practices; and

(3)(A) "Priority III" includes the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water, excluding channelization, woodland, fish and wildlife, recreational resources, and agricultural productivity.

(B) Priority III land and water resources that are geographically contiguous with existing or remediated Priority I or Priority II problems shall be considered adjacent under the definitions of Priority I or Priority II above.

(C) If the state receives any funding under 30 CFR § 872.14, 30 CFR § 872.17, or 30 CFR § 872.21, then the state may expend these funds to reclaim Priority III lands and waters if either of the following conditions applies:

(i) Facilitating the Priority I or Priority II reclamation; or

(ii) Providing reasonable savings towards the objective of reclaiming all Priority III land and water problems within the state's jurisdiction.

History. Acts 1979, No. 134, § 7; A.S.A. 1947, § 52-941; Acts 2011, No. 279, § 6.

15-58-404. Abatement of adverse effects — Lien.

(a) The Director of the Division of Environmental Quality or his or her authorized representative, under the state abandoned mine reclamation program, shall make a finding of fact that:

(1) Land or water resources have been adversely affected by past coal mining practices;

(2) The adverse effects are at a state in which, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

(3)(A) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known or readily available; or

(B) The owners will not give permission for the state or political subdivisions of the state or their agents, employees, or contractors to enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(b)(1) If the director determines that the conditions listed in subsection (a) of this section exist, the director or his or her authorized representative upon giving notice by mail to the owners, if known, or if not known, by posting notice upon the premises and advertising one (1) time in a newspaper of general circulation in the county in which the land lies, may enter upon the property adversely affected by past coal mining practice and any other property to have access to the property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent adverse effects.

(2) The entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon.

(3)(A) The moneys expended for the work and the benefits accruing to any premises so entered upon shall be chargeable against the land and shall mitigate or offset any claim in or any action brought by any owner of any interest in the premises for any alleged damages by virtue of the entry.

(B) Subdivision (b)(3)(A) of this section does not create a new right of action or eliminate existing immunities.

(c)(1) A lien exists against the property so reclaimed under this section if the moneys expended for reclamation result in a significant increase in property value.

(2)(A) The lien under subdivision (c)(1) of this section is effective upon the filing by the director of a notice of lien with the circuit clerk of the county in which the land is located and in accordance with the rules issued by the Arkansas Pollution Control and Ecology Commission.

(B) However, the notice shall constitute a lien upon the land as of the date of the expenditure of the moneys and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

(d)(1) The lien obtained under this section shall not exceed the amount determined by an independent appraisal to be the increase in the market value of the land as a result of the reclamation undertaken.

(2) The commission by rule shall establish procedures for determining the amount of the lien.

(3) The landowner or any parties aggrieved by the decision determining the amount of the lien may request an adjudicatory hearing before the commission under §§ 15-58-209 — 15-58-211.

(e) No lien shall be filed against the property of any person, in accordance with this subsection, who owned the surface prior to May 2, 1977, and who neither consented to, participated in, nor exercised control over the mining operation which necessitated the reclamation performed hereunder.

History. Acts 1979, No. 134, § 9; A.S.A. 1947, § 52-943; Acts 2011, No. 279, § 7; 2019, No. 315, §§ 1207, 1208; 2019, No. 910, § 3157.

A.C.R.C. Notes. Acts 2011, No. 279, § 7 omitted the previous subsection (d) — the omission was apparently inadvertent. The previous subsection (d) has been set out as subsection (e).

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (c)(2)(A); and substituted "rule" for "regulation" in (d)(2).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in the introductory language of (a).

15-58-405. Right of entry.

(a) The Director of the Division of Environmental Quality or his or her authorized representative pursuant to an approved state abandoned mine reclamation program shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of the adverse effects.

(b) The entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property or trespass thereon.

History. Acts 1979, No. 134, § 10; A.S.A. 1947, § 52-944; Acts 2019, No. 910, § 3158.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a).

15-58-406. Condemnation.

(a) The Director of the Division of Environmental Quality, personally or through his or her authorized legal representative, pursuant to an approved state abandoned mine reclamation program, may acquire for the state any land, by purchase, donation, or condemnation, which is adversely affected by past coal mining practices if the director determines that acquisition of such land is necessary to successful reclamation and that:

(1)(A) The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes, or provide open-space benefits; and

(B) Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or

(2) Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this chapter, or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

(b) Title to all lands acquired pursuant to this section shall be in the name of the state.

(c) The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

History. Acts 1979, No. 134, § 11; A.S.A. 1947, § 52-945; Acts 2019, No. 910, § 3159.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in the introductory language of (a).

15-58-407. Use of acquired lands — Public hearing.

(a) The Arkansas Pollution Control and Ecology Commission, pursuant to an approved state abandoned mine reclamation program, when requested after appropriate public notice, shall hold a public hearing in accordance with §§ 15-58-207 and 15-58-208 in the county or counties in which lands acquired pursuant to this subchapter are located.

(b) The hearing shall be held in accordance with procedures established by the commission through rules and at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

History. Acts 1979, No. 134, § 12; A.S.A. 1947, § 52-946; Acts 2019, No. 315, § 1209.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (b).

Subchapter 5 — Surface Coal Mining Regulation

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

15-58-501. Designation of land as unsuitable.

(a) The Arkansas Pollution Control and Ecology Commission shall issue rules that adopt appropriate procedures for identifying and designating land in this state as unsuitable for all or certain types of surface mining, which rules shall:

(1) Prevent surface coal mining operations on those lands upon which surface coal mining operations are prohibited by the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87;

(2) Adopt a procedure for development of a database and inventory system which will permit proper evaluation of the capacity of different land areas of this state to support and permit reclamation of surface coal mining operations and which includes methods for integrating and implementing federal, state, and local land use planning decisions;

(3) Integrate into the procedure as closely as possible present and future land use planning and regulation processes at the federal, state, and local levels; and

(4) Provide that any person having an interest which is or may be adversely affected may petition the commission to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have a designation terminated. Within ten (10) months

after the filing of the petition, the commission shall hold a public hearing in accordance with §§ 15-58-207 and 15-58-208.

(b) Prior to designating any land areas as unsuitable for surface coal mining operations, the commission shall prepare a detailed statement on:

(1) The potential coal resources of the area;

(2) The demand for coal resources; and

(3) The impact of the designation on the environment, the economy, and the supply of coal.

(c)(1) Upon petition pursuant to subsection (a) of this section, the commission shall designate an area as unsuitable for all or certain types of surface coal mining operations if the commission determines that reclamation pursuant to the requirements of this chapter is not technologically and economically feasible.

(2) Upon petition pursuant to subsection (a) of this section, a surface area may be designated unsuitable for certain types of surface coal mining operations if the operations will:

(A) Be incompatible with existing state or local land use plans or programs;

(B) Affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems;

(C) Affect renewable resource lands in which operations could result in a substantial loss or reduction of long range productivity of water supply or of food or fiber products, and the lands include aquifers and aquifer recharge areas; or

(D) Affect natural hazard lands in which operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

History. Acts 1979, No. 134, § 26; 1979, No. 647, § 9; A.S.A. 1947, § 52-960; Acts 2019, No. 315, § 1210.

Amendments. The 2019 amendment substituted "rules" for "regulations" twice in the introductory language of (a).

15-58-502. Necessity of permit — Application.

(a) Any person in expectation of conducting surface coal mining and reclamation operations in this state must apply for a permit.

(b) No person shall engage in or carry out on lands within the state any surface coal mining operations unless that person has first obtained a permit issued by the Director of the Division of Environmental Quality pursuant to this chapter and in accordance with the rules issued pursuant to this chapter.

(c) Any person conducting surface coal mining and reclamation operations in this state in compliance with a valid permit and who has filed a permit application may continue to conduct operations until the director approves or denies his or her application.

History. Acts 1979, No. 134, § 13; 1979, No. 647, § 2; A.S.A. 1947, § 52-947; Acts 2019, No. 315, § 1211; 2019, No. 910, § 3160.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (b).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (b).

15-58-503. Rules generally.

(a)(1) The Arkansas Pollution Control and Ecology Commission shall issue rules as are required pursuant to the state program requirements of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, designating the required information, the criteria, and the procedures for submitting, processing, and issuing or denying initial or revised applications for permits and renewals thereof to conduct surface coal mining and reclamation operations in this state.

(2) The rules shall require inclusion of all the documents, permits, notices, maps, reports, schedules, test results, reclamation and blasting plans, bonds, insurance certificates, and other information as is reasonably necessary to process the application, to ensure compliance with the provisions of this chapter and the rules issued pursuant to this chapter and to meet the state program requirements.

(3)(A) The rules shall specifically provide that all applications shall include a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity, and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding surface areas so that an assessment can be made by the Director of the Division of Environmental Quality of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability. However, this determination shall not be required until hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit shall not be approved until the information is available and is incorporated into the application.

(B) The costs of the following activities, which shall be performed by a qualified public or private laboratory or other public or private qualified entity designated by the Division of Environmental Quality shall be borne, upon written request of the small operator, by the division in accordance with rules issued by the commission:

(i) The determination of the probable hydrologic consequences required by this subdivision (a)(3), including the engineering analysis and designs necessary for the determination;

(ii) The development of cross-sections, maps, and plans of land to be affected by an application for a surface coal mining and reclamation permit which shall be prepared by or under the direction of a qualified registered professional engineer or geologist with assistance from experts in related fields such as land surveying and landscape

architecture, showing pertinent elevation and location of test borings or core samplings and depicting the following information:

(a) The nature and depth of the various strata of overburden;

(b) The location of subsurface water, if encountered, and its quality;

(c) The nature and thickness of any coal or rider seam above the coal seam to be mined;

(d) The nature of the stratum immediately below the coal seam to be mined;

(e) All mineral crop lines and the strike and dip of the coal to be mined, within the area of the land to be affected;

(f) Existing or previous surface mining limits;

(g) The location and extent of known workings of any underground mines, including mine openings to the surface;

(h) The location of aquifers;

(i) The estimated elevation of the water table;

(j) The location of spoil, waste, or refuse areas and topsoil preservation areas;

(k) The locations of all impoundments for waste or erosion control;

(l) Any settling or water treatment facility;

(m) Constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and

(n) Profiles at appropriate cross-sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation plan;

(iii) The geologic drilling and a statement of the result of the test borings or core samplings from the permit area, including:

(a) Logs of the drill holes;

(b) The thickness of the coal seam found, and an analysis of the chemical properties of the coal;

(c) The sulfur content of any coal seam;

(d) Chemical analysis of potentially acid or toxic-forming sections of the overburden; and

(e) Chemical analysis of the stratum lying immediately underneath the coal to be mined,

except that the provisions of this subdivision (a)(3)(B)(iii) may be waived by the director with respect to the specific application by a written determination that such requirements are unnecessary;

(iv) The collection of archeological information and any other historical information sufficient to prepare accurate maps to an appropriate scale clearly showing all man-made features and significant known archeological sites existing on the date of application, and the preparation of plans necessitated thereby;

(v) Preblast surveys, as requested by a resident or owner of a man-made dwelling or structure within one-half (½) mile of any portion of the permitted area. The applicant or permittee shall conduct the preblast survey of such structures and submit the survey

to the director and a copy to the resident or owner making the request;

(vi) The collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the director under this chapter; and

(vii) The division shall provide or assume the cost of training small operators concerning the preparation of permit applications and compliance with the regulatory program and shall ensure that small operators are aware of the assistance available under this subdivision (a)(3).

(C) A coal operator that has received assistance pursuant to this subdivision (a)(3) shall reimburse the division for the cost of the services rendered if the director finds that the operator's actual and attributed annual production of coal for all locations exceeds three hundred thousand (300,000) tons during the twelve (12) months immediately following the date on which the operator is issued the surface coal mining and reclamation permit.

(4) The rules shall provide that no initial or revised permit will be approved unless the application affirmatively demonstrates and the director finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval and made available to the applicants, that:

(A) The permit application is accurate and complete and that all the requirements of this chapter and the rules issued pursuant to this chapter have been complied with;

(B) The applicant has demonstrated that reclamation as required by this chapter and the rules issued pursuant to this chapter can be accomplished under the reclamation plan contained in the permit application;

(C) The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in subdivision (a)(3) of this section has been made by the director and the proposed operation thereof has been designed to prevent material damage to the hydrologic balance outside the permit area;

(D) The area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to § 15-58-501 or is not within an area under study for the designation in an administrative proceeding commenced pursuant to §§ 15-58-207 and 15-58-208;

(E) Any violation of this chapter or the rules issued pursuant to this chapter or any law, rule, or regulation of this state, the United States, or agencies of this state or the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application has been corrected or is in the process of being corrected to the satisfaction of the director, department, or agency which has jurisdiction over the violation. No

permit shall be issued to an applicant after a finding by the director after opportunity for hearing that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this chapter or the rules issued pursuant to this chapter of a nature and duration with resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this chapter or the rules issued pursuant to this chapter;

(F) If the area proposed to be mined contains prime farmland, the operator has the technological capability to restore the mined area, within a reasonable time to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards established by the commission by rule; and

(G) The prohibition of subdivision (a)(4)(E) of this section shall not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for remining under a permit held by the person making the application. As used in this subdivision (a)(4)(G), "violation" means the same as described in subdivision (a)(4)(E) of this section.

(5) The rules shall provide that all permits shall be issued for a term not to exceed five (5) years unless the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of operation.

(6) The rules shall provide that any extensions to the area covered by the permit except incidental boundary revisions must be made by application for another permit.

(7) The rules shall provide that no transfer, assignment, or sale of the rights granted under any permit issued under this chapter shall be made without the written approval of the director. However, the commission may issue rules providing for a review of outstanding permits, and the director may, in accordance with the rules, and based upon written findings after notice and public hearing, require reasonable revisions or modifications of the permit during the term of the permit.

(b) The commission shall develop by rule procedures for coordinating the issuance of permits required by federal, state, and local agencies for surface coal mining operations.

(c) The commission shall issue rules to protect confidential information which is submitted to the division as part of a permit application or pursuant to the coal exploration requirements.

History. Acts 1979, No. 134, § 13; 1979, No. 647, § 2; A.S.A. 1947, § 52-947; Acts 1993, No. 737, § 2; 1995, No. 500, §§ 3, 4; 1999, No. 1164, § 149; 2019, No. 315, § 1212; 2019, No. 384, §§ 8-10; 2019, No. 910, §§ 3161-3165.

Amendments. The 2019 amendment by No. 315 substituted "Rules" for "Regulations" in the section heading; and, throughout the section, substituted "rules" for "regulations".

The 2019 amendment by No. 384 sub-

stituted "subdivision (a)(3)" for "subdivision (a)(2)" in (a)(3)(B)(i); substituted "subdivision (a)(3)(B)(iii)" for "subdivision (a)(2)(B)(iii)" near the end of (a)(3)(B)(iii); substituted "subdivision (a)(3)" for "subdivision (a)(2)" in (a)(3)(B)(vii), (a)(3)(C), and (a)(4)(C); and, in (a)(4)(G), substituted "The prohibition" for "After March 1, 1995, the prohibition", substituted "subdivision (a)(4)(E)" for "subdivision (a)(3)(E)" twice, deleted "the term" preceding "'violation'", and substituted "means the same as described in" for "has the same meaning as the term has under".

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a)(3)(A) and the introductory language of (a)(3)(B); and substituted "division" for "department" throughout (a) and (c).

15-58-504. Exploration operations.

(a) Coal exploration operations which substantially disturb the natural land surface shall be conducted in accordance with coal exploration rules issued by the Arkansas Pollution Control and Ecology Commission.

(b) Coal exploration rules shall provide, at a minimum, that prior to conducting any exploration under this subchapter, any person must file with the Division of Environmental Quality notice of intention to explore, and that no operator shall remove more than two hundred fifty (250) tons of coal pursuant to an exploration permit without the specific written approval of the division.

(c) Coal exploration operations which substantially disturb the natural land surface in violation of this chapter or in violation of the rules issued pursuant to this chapter shall be subject to the civil and criminal penalties and enforcement provisions of this chapter.

History. Acts 1979, No. 134, § 13; 1979, No. 647, § 2; A.S.A. 1947, § 52-947; Acts 1999, No. 1164, § 150; 2019, No. 315, § 1213; 2019, No. 910, § 3166.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" throughout the section.

The 2019 amendment by No. 910, in (b), substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" and "division" for "department".

15-58-505. Filing objections to permits.

Any person having an interest which is or may be adversely affected, or the officer or head of any federal, state, or local affected governmental agency may, in accordance with §§ 15-58-207 and 15-58-208 and the rules promulgated by the Arkansas Pollution Control and Ecology Commission, file written objections to a proposed initial or revised permit for surface coal mining and reclamation operations, or renewal thereof.

History. Acts 1979, No. 134, § 13; 1979, No. 647, § 2; A.S.A. 1947, § 52-947; Acts 2019, No. 315, § 1214.

Amendments. The 2019 amendment substituted "rules" for "regulations".

15-58-506. Permit renewal.

(a) Any valid permit issued pursuant to this chapter shall carry with it the right to successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The holders of the permit may apply for renewal, and renewal shall be issued unless the opponents of renewal have established, and the Arkansas Pollution Control and Ecology Commission finds in writing, that:

(1) The terms and conditions of the existing permit are not being satisfactorily met;

(2) The present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this chapter and the rules issued pursuant to this chapter;

(3) The renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas;

(4) The operator has not provided evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested in such application as well as any additional bond the regulatory authority might require pursuant to § 15-58-509; or

(5) Any additional revised or updated information required by the regulatory authority has not been provided. Prior to the approval of any renewal of permit, the commission shall provide notice to the appropriate public authorities.

(b) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new applications under this chapter.

(c) Any permit renewal shall be for a term not to exceed the period of the original permit established by this chapter. Application for the permit renewal shall be made at least one hundred twenty (120) days prior to the expiration of the valid permit.

History. Acts 1979, No. 134, § 13; 1979, No. 647, § 2; A.S.A. 1947, § 52-947; Acts 2019, No. 315, § 1215.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a)(2).

15-58-508. Fees — Surface Coal Mining Operation Fund.

(a) Each application for a surface coal mining permit or renewal of that permit shall be accompanied by an initial application fee as determined by the Director of the Division of Environmental Quality in accordance with a fee schedule which the Arkansas Pollution Control and Ecology Commission shall develop and issue by rules.

(b) The initial application fee shall be based as nearly as possible on the actual or anticipated cost of reviewing the application.

(c) After approval but before issuance of the surface coal mining permit or renewal permit, the applicant shall pay a final application fee which shall not exceed the actual or anticipated cost of administering

and enforcing the permit. However, this final application fee may be paid in annual installments apportioned over the term of the permit.

(d) The Division of Environmental Quality shall maintain a separate Surface Coal Mining Operation Fund for the fees which may only be used for the administration and enforcement of this chapter and as the state's matching percentage share for any grants available to the state for the administration and enforcement of the state program.

History. Acts 1979, No. 134, § 13; 1979, No. 647, § 2; A.S.A. 1947, § 52-947; Acts 1999, No. 1164, § 151; 2019, No. 315, § 1216; 2019, No. 910, §§ 3167, 3168.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (a).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a) and (d).

15-58-509. Performance bonds.

(a) After a surface coal mining and reclamation permit application has been approved but before the permit is issued, the applicant shall file a bond with the Division of Environmental Quality. This bond shall be on a form furnished by the division in accordance with the rules issued by the Arkansas Pollution Control and Ecology Commission. It shall be for performance or acceptable alternative payable, as appropriate, to the division and conditioned upon faithful performance of all the requirements of this chapter, the rules issued pursuant to this chapter, and the permit.

(b) All forfeitures collected under this chapter shall be deposited into a separate Mining Reclamation Trust Fund which shall be maintained by the division. The fund may only be used to accomplish reclamation of land covered by forfeitures of performance bonds.

(c) The rules shall include provisions for posting a bond sufficient to cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit and for filing additional bonds to cover succeeding increments of area within the permit upon which the operator intends to conduct surface coal mining and reclamation operations.

(d) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for that period required to establish successful revegetation in accordance with the rules issued by the commission.

(e) The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the division in the event of forfeiture. In no case shall the bond for the entire area under one (1) permit be less than ten thousand dollars ($10,000).

(f) The commission shall issue rules setting out the criteria and procedures for processing requests for the release of all or any part of a performance bond provided that no bond shall be fully released until all

reclamation requirements of this chapter and the rules issued pursuant to this chapter are fully met. Rules shall include provisions for public notice of all requests for full or partial releases, an inspection and evaluation of the reclamation work, and a schedule for partial releases.

(g) Any person having an interest which is or may be adversely affected, or the office or head of any federal, state, or local affected governmental agency may, in accordance with §§ 15-58-209 — 15-58-211, file written objections to the proposed release from bond and request an adjudicatory public hearing.

History. Acts 1979, No. 134, § 14; A.S.A. 1947, § 52-948; Acts 1999, No. 1164, §§ 152, 153; 2019, No. 315, §§ 1217-1219; 2019, No. 910, §§ 3169, 3170.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" throughout the section.

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a); substituted "division" for "department" throughout (a), (b), and (e); and substituted "division" for "department of" in the last sentence of (a).

15-58-510. Environmental protection performance standards.

(a) Any permit issued pursuant to this chapter to conduct surface coal mining operations and any authorization to conduct coal exploration operations shall require that operations will meet all applicable performance standards of this chapter and the rules issued pursuant to this chapter.

(b) The Arkansas Pollution Control and Ecology Commission shall issue rules which are consistent with and in accordance with, but no more restrictive than, all the applicable environmental protection performance standards found in the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87 and in the regulations issued pursuant to the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87.

(c) The commission shall issue rules requiring the training, examination, and certification of persons engaging in or directly responsible for blasting or use of explosives in surface coal mining operations.

(d) All departures, variances, and exceptions from the performance standards which are provided in the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87 and in the regulations issued pursuant to that chapter and other departures, variances, and exceptions which may be granted through a state program shall be provided for in the rules issued by the commission pursuant to this chapter. The departures, variances, and exceptions provided for in the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87 and in the regulations issued pursuant to that law shall be granted or allowed upon a showing of the same circumstances and conditions required in the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87 or in the regulations issued pursuant to that law.

History. Acts 1979, No. 134, § 15; A.S.A. 1947, § 52-949; Acts 2019, No. 315, § 1220.

Amendments. The 2019 amendment substituted "rules" for "regulations" throughout the section.

SUBTITLE 6. OIL, GAS, AND BRINE

CHAPTER 71

OIL AND GAS COMMISSION

SECTION.

Effective Dates. Acts 2015, No. 1046, § 5: July 1, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the activities funded by general revenue are necessary for the preservation of the public peace, health, and safety; that increased general revenue funding is essential to the performance of these activities; and that without that increased funding, these activities may be compromised. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2015."

Acts 2017, No. 977, § 5: Apr. 7, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the activities funded by general revenue are necessary for the preservation of the public peace, health, and safety; that increased general revenue funding is essential to the performance of these activities; and that this act is immediately necessary because without that increased funding, these activities may be compromised. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2019, No. 705, § 5: Apr. 4, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the activities funded by general revenue are necessary for the preservation of the public peace, health, and safety; that increased general revenue funding is essential to the performance of these activities; and that this act is immediately necessary because without that increased funding, these activities may be compromised. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto".

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

15-71-101. Creation.

RESEARCH REFERENCES

Ark. L. Rev. Thomas A. Daily, Symposium Article: Rules Done Right: How Arkansas Brought Its Oil and Gas Law into a Horizontal World, 68 Ark. L. Rev. 259 (2015).

15-71-103. Organization — Meetings.

(a) The Oil and Gas Commission shall elect from its number a chair.

(b) The commission shall establish an office at the county seat of some county in Arkansas in which oil or gas is produced, which place shall be designated by resolution of the commission and at which the records of the commission shall be kept.

(c) The commission shall meet or hold hearings at times and places found by the commission to be necessary to carry out its duties.

(d)(1) A majority of the commission shall constitute a quorum, and a majority of those voting for and against the adoption or promulgation of any rule or order shall be necessary for the adoption or promulgation of the rule or order.

(2) However, in no event shall any rule or order be adopted or promulgated without receiving at least five (5) affirmative votes.

History. Acts 1939, No. 105, §§ 2, 3; 1979, No. 113, § 1; A.S.A. 1947, §§ 53-102, 53-103; Acts 1987 (1st Ex. Sess.), No. 32, § 1; 1987 (1st Ex. Sess.), No. 53, § 1; 2009, No. 1175, § 1; 2019, No. 315, § 1221.

Amendments. The 2019 amendment deleted "regulation" following "rule" throughout (d).

15-71-104. Counsel for the commission.

(a)(1) The Oil and Gas Commission, in consultation with the Secretary of the Department of Energy and Environment, may employ an attorney to provide specialized professional services in matters requiring legal representation.

(2) However, any contract for legal representation shall be subject to approval by the Attorney General, who shall otherwise be attorney for the commission.

(b) Any member of the commission or the secretary thereof shall have power to administer oaths to any witness in any hearing, investigation, or proceeding contemplated by this act or by any other law of this state relating to the conservation of oil or gas.

History. Acts 1939, No. 105, § 4; A.S.A. 1947, § 53-104; Acts 2001, No. 1189, § 1; 2019, No. 910, § 3171.

Amendments. The 2019 amendment inserted "in consultation with the Secretary of the Department of Energy and Environment" in (a)(1).

15-71-105. Director of Production and Conservation.

(a)(1) The Oil and Gas Commission may appoint one (1) Director of Production and Conservation.

(2) The appointment under subdivision (a)(1) of this section is with the approval of the Governor.

(3) The director serves at the pleasure of the Governor at the salary set by law.

(4) The director shall report to the Secretary of the Department of Energy and Environment.

(b) The commission and the Secretary of the Department of Energy and Environment may authorize the director to employ other assistants, petroleum and natural gas engineers, bookkeepers, auditors, gaugers, and stenographers and other employees as necessary to properly administer and enforce the provisions of this act.

(c) The director shall:

(1) Be the ex officio secretary of the commission;

(2) Keep all minutes and records of the commission;

(3) Collect and remit to the Treasurer of State all moneys collected by the commission;

(4) Be the executive officer and administrator for all oil and gas activities regulated by the commission;

(5) Initiate and settle a civil or an administrative action to compel compliance with:

(A) A law administered by the commission; or

(B) An order or rule issued by the commission;

(6) Administer the day-to-day activities of the commission, including without limitation the commission's fiscal and personnel activities; and

(7) Perform any other duty or act required or authorized by law or the rules or orders of the commission.

History. Acts 1939, No. 105, § 5; 1979, No. 113, § 2; 1983, No. 691, § 10; A.S.A. 1947, §§ 53-102.1, 53-105; Acts 2009, No. 1175, § 2; 2019, No. 315, §§ 1222, 1223; 2019, No. 910, § 3172.

Amendments. The 2019 amendment by No. 315 substituted "order or rule" for "order, rule, or regulation" in (c)(5)(B); and deleted "regulations" following "rules" in (c)(7).

The 2019 amendment by No. 910 added (a)(4); and inserted "and the Secretary of the Department of Energy and Environment" in (b).

15-71-107. Control or regulation of oil and gas production — Assessment on production — Use of money — Increase in assessment.

(a)(1) All common sources of supply of crude oil discovered after January 1, 1937, if so found necessary by the Oil and Gas Commission, shall have the production of oil therefrom controlled or regulated in accordance with the provisions of this act.

(2)(A)(i) The commission is authorized to assess from time to time against each barrel of oil produced and saved a charge not to exceed fifty (50) mills on each barrel.

(ii) The charge that may be assessed pursuant to this subsection shall apply to each barrel of oil produced and saved, including that from common sources of supply discovered prior to January 1, 1937.

(B) All moneys so collected shall be used solely to pay the expenses and other costs in connection with the administration of this law.

(b)(1) All common sources of supply of natural gas discovered after January 1, 1937, if so found necessary by the commission, shall have the production of gas therefrom controlled or regulated in accordance with the provisions of this act.

(2)(A)(i) The commission is authorized to assess from time to time against each one thousand cubic feet (1,000 cu. ft.) of gas produced and saved from a gas well a charge not to exceed ten (10) mills on each one thousand cubic feet (1,000 cu. ft.) of gas.

(ii) The charge that may be assessed pursuant to this subsection shall apply to each one thousand cubic feet (1,000 cu. ft.) of natural gas produced and saved, including that from common sources of supply discovered prior to January 1, 1937.

(B) All moneys collected under subdivision (b)(2)(A)(i) of this section shall be used as follows:

(i) The first four and one-half (4½) mills of each gas assessment levied each fiscal year until July 1, 2021, shall be deposited as general revenues; and

(ii) The remainder shall be used to pay the expenses and other costs in connection with the administration of this law.

(c) Before the commission implements the collection process of any increase in the millage assessment that may be authorized by law on each barrel of oil or on each one thousand cubic feet (1,000 cu. ft.) of gas, the commission shall first seek review from the Legislative Council or the Joint Budget Committee.

History. Acts 1939, No. 105, § 6; 1975, No. 166, § 1; 1981, No. 523, § 1; A.S.A. 1947, § 53-106; Acts 1991, No. 252, § 7; 2001, No. 1188, § 1; 2009, No. 1175, §§ 4, 5; 2015, No. 1046, § 1; 2017, No. 977, § 1; 2019, No. 705, § 1.

Amendments. The 2015 amendment rewrote (b)(2)(B).

The 2017 amendment substituted "2019" for "2017" in (b)(2)(B)(i).

The 2019 amendment substituted "July 1, 2021" for "July 1, 2019" in (b)(2)(B)(i).

15-71-109. Oil and Gas Commission Fund — Payment of commission vouchers.

(a) All moneys collected under this act, except the first four and one-half (4½) mills on gas assessments levied each fiscal year until July 1, 2021, under § 15-71-107(b)(2)(A)(i), when paid to the Treasurer of State, shall be deposited to the credit of the Oil and Gas Commission Fund.

(b) The Auditor of State is directed to honor vouchers drawn by the Chair of the Oil and Gas Commission or the disbursing agent designated by the Oil and Gas Commission, and the Treasurer of State is directed to pay warrants so issued. Nothing herein shall be construed to authorize the payment of any voucher unless the voucher has been audited prior to payment, as provided by law.

History. Acts 1939, No. 105, § 8; A.S.A. 1947, § 53-108; Acts 2015, No. 1046, § 2; 2017, No. 977, § 2; 2019, No. 705, § 2.

Amendments. The 2015 amendment, in (a), deleted "the provisions of" following "collected under" and inserted "except the first four and one-half (4½) mills on gas assessments levied each fiscal year until July 1, 2017, under § 15-71-107(b)(2)(A)(i)."

The 2017 amendment substituted "2019" for "2017" in (a).

The 2019 amendment substituted "July 1, 2021" for "July 1, 2019" in (a).

15-71-110. Powers and duties — Rules — Definitions.

(a)(1) The Oil and Gas Commission shall have jurisdiction of and authority over all persons and property necessary to administer and enforce effectively the provisions of this act and all other statutory authority of the commission relating to the exploration, production, and conservation of oil and gas.

(2) Production of natural gas includes both the production facilities and production process.

(3) This jurisdiction includes, but is not limited to, jurisdiction over production facilities and natural gas production facilities wherein natural gas contains one hundred (100) or more parts per million of hydrogen sulfide.

(b)(1) "Production facilities" includes, without limitation, piping or equipment used in the production, extraction, recovery, lifting, stabilization, separation, or treatment of natural gas or associated storage or measurement from the wellhead to a meter where the gas is transferred to a custodian other than the well operator for gathering or transport, commonly known as a "custodial transfer meter".

(2) "Production process" means the extraction of gas from the geological source of supply to the surface of the earth, then through the lines and equipment used to treat, compress, and measure the gas between the wellhead and the meter, where it is either sold or delivered to a custodian other than the well operator for gathering and transportation to a place of sale, sometimes called the "custodial transfer meter".

(c)(1) The commission shall have the authority and it shall be its duty to make inquiries as it deems proper to determine whether or not waste over which it has jurisdiction exists or is imminent.

(2) In the exercise of that power, the commission shall have the authority to:

(A) Collect data;

(B) Make investigations and inspections;

(C) Examine properties, leases, papers, books, and records;

(D) Examine, check, test, and gauge oil and gas wells, tanks, refineries, and means of transportation;

(E) Hold hearings;

(F) Provide for the keeping of records and the making of reports; and

(G) Take action as reasonably necessary to enforce this act.

(d) After hearing and notice as provided in this act, the commission may make such reasonable rules and orders as are necessary from time to time in the proper administration and enforcement of this act, including rules or orders for the following purposes:

(1) To require:

(A) The drilling, casing, operation, and plugging of wells to be done in such a manner as to:

(i) Prevent the escape of oil or gas from one (1) stratum to another;

(ii) Prevent the intrusion of water into an oil or gas stratum from a separate stratum; and

(iii) Prevent the pollution of fresh water supplies and unnecessary damage to property, soil, animals, fish, or aquatic life by oil, gas, or salt water; and

(B) A reasonable financial assurance acceptable to the commission conditioned on the performance of the duty to plug each dry or abandoned well;

(2) To require the making of reports showing the location of oil and gas wells and the filing of logs and drilling records;

(3) To prevent the drowning by water of any stratum or part of any stratum capable of producing oil and gas in paying quantities and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil and gas from any pool;

(4) To require the operation of wells with efficient gas-to-oil ratios and to fix those ratios;

(5) To prevent blow outs, caving, and seepage in the sense that conditions indicated by those terms are generally understood in the oil and gas business;

(6) To prevent fires;

(7) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures, and all storage and transportation equipment and facilities;

(8) To regulate the shooting, perforating, and chemical treatment of wells;

(9) To regulate secondary recovery methods, including the introduction of gas, air, water, or other substances into producing formations;

(10) To limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as defined in this act;

(11) To issue and regulate, either generally or in or from particular areas or wells, certificates of clearance or tenders in connection with the transportation or sale of oil or gas;

(12) To regulate the spacing of wells and to establish drilling units;

(13) To prevent, so far as is practical, reasonably avoidable drainage from each development unit which is not equalized by counter drainage regarding oil and gas;

(14) With respect to the drilling of wells for production and disposal of salt water, the commission shall have the jurisdiction of and authority over all persons and property to the extent necessary to effectively make and enforce rules and orders for the following purposes:

(A) To require that before drilling any well in search of salt water or for the injection of salt water into the earth, the operator shall obtain from the commission a permit authorizing that drilling;

(B) To require that casing and cementing of supply wells and injection wells be done in accordance with such rules as may be promulgated by the commission;

(C) To require the plugging of wells to be done in such a manner as to:

(i) Prevent the escape of salt water out of one stratum into another;

(ii) Prevent the intrusion of salt water into an oil and gas stratum; and

(iii) Prevent the pollution of fresh water supplies by salt water;

(D) To require the making of reports showing the completing data, volume of water injected, and the filing of electrical logs of all wells with the commission;

(E) To regulate the shooting and perforating of all wells;

(F) To require the operation of wells in a manner designed to prevent blow outs, caving, and seepage;

(G) To physically identify at the site the ownership of all salt water wells, plants, ponds, structures, and all storage facilities; and

(H)(i) To require the annual payment of one hundred dollars ($100) per well for each injection well and disposal well and each well into which debrominated brine is injected.

(ii) All moneys so collected shall be used solely to pay the expenses and other costs in the administration of this law;

(15) To administer and enforce the applicable provisions of the Natural Gas Policy Act of 1978, Pub. L. No. 95-621;

(16) To acquire primary enforcement responsibility either singularly or jointly with the Division of Environmental Quality for the control of underground injection under the applicable provisions of the Safe Drinking Water Act, Pub. L. No. 93-523, as it existed on January 1, 2005;

(17)(A)(i)*(a)* To require the payment of a fee of two hundred fifty dollars ($250) or a sum the commission may prescribe for each application for hearing or other proceeding before it under this act.

(b) The fee shall not exceed five hundred dollars ($500); and

(ii) To prescribe a reasonable and necessary charge or fee per copy and per subscription for notices and reports prepared and published by the commission deemed necessary to reimburse the commission for the cost of those notices and reports.

(B) All moneys so collected shall be used solely to pay the expenses and other costs in the administration of this law; and

(18) To administer and enforce any applicable provisions of the Natural Gas Pipeline Safety Act of 1968, Pub. L. No. 90-481, and to specifically empower the commission to submit any satisfactory certification required by the Natural Gas Pipeline Safety Act of 1968, Pub. L. No. 90-481, in connection with:

(A) A production process or production facility as defined in this section; or

(B) A natural gas pipeline or associated facility whose:

(i) Owner is not affiliated with an Arkansas natural gas public utility; and

(ii) Majority owner is either a production company or an affiliate of a production company; or

(19) To require any owner or operator to provide a meter reading or report of the amount of natural gas sold or to allow the commission to obtain a meter reading of the amount of natural gas sold.

(e) The commission has the following specific powers and duties in administering the Abandoned and Orphaned Well Plugging Program and the Abandoned and Orphaned Well Plugging Fund:

(1) To adopt rules necessary to implement the program, including rules regarding wells deemed abandoned in accordance with § 15-72-217;

(2) To collect the fees assessed by the commission under this chapter and to make deposits into the fund;

(3) To deposit the amount of any forfeited bond or other financial assurance into the fund;

(4) To recover well-site plugging, repair, and restoration costs from well operators who fail to reimburse the fund for expenses attributable to those well operators and to deposit any amounts reimbursed or collected into the fund;

(5) To accept, receive, and deposit into the fund any grants, gifts, or other funds that may be made available from public or private sources;

(6) To make expenditures of amounts appropriated from the fund, as the commission may deem appropriate in its sole discretion, for the sole purposes of plugging, replugging, or repairing any well or restoring the site of any well, including, but not limited to:

(A) Removal of well-site equipment or production facilities; and

(B) Reimbursement to landowners through grants for plugging a well and restoring the site of a well, including, but not limited to,

removal of well-site equipment located on the landowner's property for which the landowner has no legal obligation to plug the wells or remove the well-site equipment, if the well is determined by the commission to be abandoned or ordered by the commission to be plugged, replugged, repaired, or restored;

(7) To enter into contracts and to administer a landowner grant program in accordance with applicable state law; and

(8) To dispose of well-site equipment, including an associated tank battery and production facility equipment, and any amount of hydrocarbons from the well that is stored on the lease, in a commercially reasonable manner at generally recognized market value, by either or both of the following methods after the well has been determined to be abandoned by the commission:

(A) A plugging contract may provide that the person plugging the well or remediating oil field waste pollution, or both, shall have clear title, subject to any prior perfected claim on all well-site equipment and hydrocarbons from the well that are stored on the lease or hydrocarbons recovered during the plugging operation, in exchange for a sum of money deducted as a credit from the contract price; or

(B)(i)*(a)* The well-site equipment, including, but not limited to, an associated tank battery and production facility equipment, hydrocarbons from the well that are stored on the lease, and hydrocarbons recovered during the plugging operation may be sold at a public auction or a public or private sale.

(b) The proceeds from any sale under subdivision (e)(8)(B)(i)*(a)* of this section shall be deposited into the fund.

(ii) All well-site equipment and hydrocarbons acquired by a person by sale shall be acquired under clear title subject to any prior perfected claims.

(f) Nothing in this section is to affect any hydrogen sulfide emission standards or ambient air standards enacted by the General Assembly.

History. Acts 1939, No. 105, § 11; 1969, No. 111, § 1; 1979, No. 113, § 3; 1981, No. 523, § 3; A.S.A. 1947, § 53-111; Acts 1999, No. 1047, § 1; 1999, No. 1164, § 154; 2005, No. 1267, § 1; 2007, No. 859, §§ 1, 2; 2009, No. 452, § 1; 2009, No. 1175, §§ 7-9; 2019, No. 315, §§ 1224, 1225; 2019, No. 910, § 3173.

Amendments. The 2019 amendment by No. 315 deleted "regulations" following "rules" twice in the introductory language of (d); and deleted "and regulations" following "rules" in (d)(14)(B).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (d)(16).

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Lead Limitations and "Lead and Copper" Rule of Safe Drinking Water Act. 16 A.L.R. Fed. 3d Art. 3 (2016).

Citizen's Cause of Action Under Safe Drinking Water Act, 42 U.S.C. § 300j-8. 16 A.L.R. Fed. 3d Art. 4 (2016).

Ark. L. Rev. Thomas A. Daily, Symposium Article: Rules Done Right: How Arkansas Brought Its Oil and Gas Law into a Horizontal World, 68 Ark. L. Rev. 259 (2015).

Phillip E. Norvell, Symposium Article: The History of Oil and Gas Conservation

Legislation in Arkansas, 68 Ark. L. Rev. 349 (2015).

U. Ark. Little Rock L. Rev. Thomas A. Daily & W. Christopher Barrier, Still Fugacious After All These Years: A Sequel to the Basic Primer on Arkansas Oil and Gas Law, 35 U. Ark. Little Rock L. Rev. 357 (2013).

15-71-111. Procedural rules or orders — Hearing.

(a)(1) The Oil and Gas Commission shall prescribe its rules of order or procedure in hearings or other proceedings before the commission.

(2) The commission's rules of order and procedure shall be adopted in accordance with the law of this state.

(3) The commission shall comply with the laws of this state and the commission's rules that are applicable to the commission's hearings and proceedings.

(b)(1) A rule or order, including change, renewal, or extension of a rule or order in the absence of an emergency shall not be made by the commission under this act except after an opportunity for a public hearing upon at least ten (10) days' notice given in the manner and form as may be prescribed by the commission.

(2) The public hearing shall be held at the time, place, and in the manner prescribed by the commission.

(3) Any person having any interest in the subject matter of the hearing shall be entitled to be heard.

(c)(1) In the event an emergency is found to exist by the commission which in its judgment requires the making, changing, renewal, or extension of a rule or order without first having a hearing, the emergency rule or order shall have the same validity as if a hearing with respect to that rule or order had been held after due notice.

(2) The emergency rule or order permitted by this subsection is effective until the date of the next regular commission hearing set to be held after the emergency rule or order was issued.

(3) In any event, it shall expire when the rule or order made after due notice and hearing with respect to the subject matter of the emergency rule or order becomes effective.

(d) Should the commission elect to give notice by personal service, the service may be made by any officer authorized to serve process or by any agent of the commission in the same manner as is provided by law for the service of summons in civil actions in the circuit courts of this state. Proof of the service by the agent shall be by the affidavit of the person making personal service.

(e) All rules and orders made by the commission shall be in writing and shall be entered in full by the Director of Production and Conservation in a book to be kept for such purpose by the commission. This book shall be a public record and shall be open to inspection at all times during reasonable office hours. A copy of the rule or order, certified by the director, shall be received in evidence in all courts of this state with the same effect as the original.

(f) Any interested person shall have the right to have the commission call a hearing for the purpose of taking action in respect to any matter

within the jurisdiction of the commission by making a request therefor in writing. Upon the receipt of any request, the commission shall promptly call a hearing thereon, and, after the hearing, and with all convenient speed and in any event within thirty (30) days after the conclusion of the hearing, shall take such action with regard to the subject matter thereof as it may deem appropriate.

History. Acts 1939, No. 105, § 12; A.S.A. 1947, § 53-112; Acts 2009, No. 1175, § 10; 2015, No. 906, § 1; 2019, No. 315, §§ 1226, 1227.

Amendments. The 2015 amendment, in (b)(1), substituted "rule or order" for "rule, regulation, or order," deleted "the provisions of" preceding "this act," and inserted "an opportunity for."

The 2019 amendment deleted "regulation" following "rule" throughout (c) and (e); and deleted "regulations" following "rules" in the first sentence of (e).

CASE NOTES

Failure to Comply with Rules.

Issuance of a commercial disposal well permit was made upon unlawful procedure and was thus subject to reversal under § 25-15-212(h)(3) because the Arkansas Oil and Gas Commission failed to comply with its own rules pursuant to subdivision (a)(3) of this section when it did not require timely proof of financial assurance under Ark. Oil & Gas Comm'n Rule H-1. Capstone Oilfield Disposal of Ark., Inc. v. Pope County, 2012 Ark. App. 231, 408 S.W.3d 65 (2012).

15-71-113. Authority to acquire and maintain unmarked cars.

(a) In order to enable the Oil and Gas Commission to carry out its duties in the most effective and efficient manner, the commission is authorized, in consultation with the Secretary of the Department of Energy and Environment, to acquire and maintain for use by field personnel full-sized sedan automobiles equipped with V-8 engines in the three-hundred-fifty-cubic-inch displacement range, limited slip differentials, and vinyl seat covers.

(b) Since marked cars sometimes prove a hindrance to the commission in carrying out its inspection, investigation, and enforcement responsibilities, the commission is exempted from any and all laws and administrative rules regarding special registration tags and special decals for state-owned vehicles.

History. Acts 1981, No. 319, § 6; A.S.A. 1947, § 53-138; Acts 2019, No. 315, § 1228; 2019, No. 910, § 3174.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (b).

The 2019 amendment by No. 910 inserted "in consultation with the Secretary of the Department of Energy and Environment" in (a).

15-71-114. Permit required for field seismic operations.

(a)(1) Any person or entity desiring to perform field seismic operations in the state shall make application to the Oil and Gas Commission for a permit to do so.

(2)(A) The application for a permit shall be made on forms prescribed by the commission.

(B) The application shall include the name and principal business address of the applicant, the location in the state where the applicant plans to conduct field seismic operations, a designated agent for service of process in Arkansas, and such other information as may be prescribed by rule of the commission.

(3)(A) The application shall be accompanied by a financial assurance acceptable to the commission in the amount of fifty thousand dollars ($50,000) or such larger amount as may be prescribed by the commission not to exceed two hundred fifty thousand dollars ($250,000).

(B) The financial assurance shall be executed by the applicant, as principal, and a corporate surety approved by the commission and shall be conditioned that the permittee shall pay all damages resulting from the seismic operations.

(C) The financial assurance shall be maintained at an amount not less than fifty thousand dollars ($50,000) nor more than two hundred fifty thousand dollars ($250,000) as may be set by the commission, so long as the permittee is conducting field seismic operations in the state and until released by the commission.

(D)(i) Any surface owner seeking to recover under a financial assurance as described in subdivisions (a)(3)(A)-(C) of this section for damages caused by the performance of the field seismic operations shall file written notice of claim for the damages with the commission within one (1) year of the date of expiration of the permit for conducting such operations.

(ii) However, the claim shall be subordinate to the rights of the commission under the financial assurance to secure compliance by the permittee with the provisions of this section and the rules of the commission promulgated under this section.

(b) The commission shall have authority to make such reasonable rules and orders as necessary from time to time for the proper administration and enforcement of this section and to require the payment of a registration fee of two hundred fifty dollars ($250) or such sum as the commission may prescribe for each application for registration filed under this section. However, in no event shall the fee exceed five hundred dollars ($500).

(c) It is unlawful for any person or entity to perform any field seismic operations in the state unless the person or entity first obtains a permit to do so as provided for in this section.

(d)(1) Any person who conducts any field seismic operation in the state without having obtained a permit under this section or without having fully complied with the provisions of this section or any rules adopted by the commission under this section is subject to a civil penalty of two thousand five hundred dollars ($2,500) for each day the operation continues.

(2) Any person who, for the purpose of evading this section or any rule or order made under this section, intentionally makes or causes to

be made any false entry or statement of fact in any application report required to be made by this section or by any rule or order made under this section, or who, for such a purpose, omits to make or causes to be omitted, any entry, statement of fact, or report required to be made by this section or any rule or order made under this section, or who, for such a purpose, moves out of the jurisdiction of the state, shall be guilty of a misdemeanor and shall be subject to a fine of not more than five thousand dollars ($5,000) or imprisonment for a term of not more than six (6) months, or to both such fine and imprisonment.

History. Acts 1991, No. 5, §§ 1-3; 1993, No. 342, § 1; 2005, No. 1267, § 2; 2009, No. 1175, § 11; 2019, No. 315, §§ 1229-1232.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (a)(2)(B); deleted "and regulations" following "rules" in (a)(3)(D)(ii) and (d)(1); deleted "regulations" following "rules" in the first sentence of (b); and deleted "regulation" following "rule" throughout (d)(2).

15-71-116. Annual fee assessment.

RESEARCH REFERENCES

Ark. L. Rev. Phillip E. Norvell, Symposium Article: The History of Oil and Gas Conservation Legislation in Arkansas, 68 Ark. L. Rev. 349 (2015).

15-71-117. Fees — Exploration and production fluid transportation system — Natural gas pipeline system operator.

(a) Each application submitted by an operator of an exploration and production fluid transportation system equipped for carrying or pulling a transportation tank as defined by the Oil and Gas Commission's General Rules and Regulations, Rule E-3 shall be accompanied by an application fee for each transportation tank as determined by the Oil and Gas Commission in an amount not to exceed one hundred dollars ($100).

(b) Each application by a pipeline operator to construct or operate a jurisdictional pipeline system as defined by the Oil and Gas Commission's General Rules and Regulations, Rule D-17 shall be accompanied by a permit fee as determined by the commission in an amount not to exceed five thousand dollars ($5,000).

(c)(1) Each application for a hearing shall be accompanied by a fee as determined by the commission in an amount up to two dollars ($2.00) for each person whose address is provided by the applicant and the applicant has identified in the application or requested to receive a copy of the order from the hearing under the Oil and Gas Commission's General Rules Rule A-2(a)(5).

(2) Subdivision (c)(1) of this section shall not apply to an application filed by the commission.

(d) The fees collected under subsections (a)-(c) of this section are cash funds of the commission to use in any manner permissible under law.

History. Acts 2013, No. 1466, § 1; 2019, No. 315, § 1233.

Amendments. The 2019 amendment deleted "and Regulations" following "Rules" in (c)(1).

CHAPTER 72

OIL AND GAS PRODUCTION AND CONSERVATION

SUBCHAPTER.

RESEARCH REFERENCES

Ark. L. Rev. Owen L. Anderson, Symposium Issue: Foreword: The Evolution of Oil and Gas Conservation Law and the Rise of Unconventional Hydrocarbon Production, 68 Ark. L. Rev. 231 (2015).

Thomas A. Daily, Symposium Article: Rules Done Right: How Arkansas Brought Its Oil and Gas Law into a Horizontal World, 68 Ark. L. Rev. 259 (2015).

Phillip E. Norvell, Symposium Article: The History of Oil and Gas Conservation Legislation in Arkansas, 68 Ark. L. Rev. 349 (2015).

Subchapter 1 — General Provisions

SECTION.

15-72-101. Declaration of policy.

RESEARCH REFERENCES

Ark. L. Rev. Thomas A. Daily, Symposium Article: Rules Done Right: How Arkansas Brought Its Oil and Gas Law into a Horizontal World, 68 Ark. L. Rev. 259 (2015).

Phillip E. Norvell, Symposium Article: The History of Oil and Gas Conservation Legislation in Arkansas, 68 Ark. L. Rev. 349 (2015).

15-72-102. Definitions.

As used in this act:

(1) "Commission" means the Oil and Gas Commission;

(2)(A) "Field" means the general area which is underlaid or appears to be underlaid by at least one (1) pool. "Field" includes the underground reservoir or reservoirs containing crude petroleum oil or natural gas, or both.

(B)(i) The words "field" and "pool" mean the same thing when only one (1) underground reservoir is involved.

(ii) However, "field", unlike "pool", may relate to two (2) or more pools;

(3) "Gas" means all natural gas, including casing-head gas, and all other hydrocarbons not defined as oil in subdivision (7) of this section;

(4) "Illegal gas" means gas which has been produced within the State of Arkansas from any well during any time that that well has produced in excess of the amount allowed by any rule or order of the commission, as distinguished from gas produced within the State of Arkansas from a well not producing in excess of the amount so allowed, which is "legal gas";

(5) "Illegal oil" means oil which has been produced within the State of Arkansas from any well during any time that that well has produced in excess of the amount allowed by rule or order of the commission, as distinguished from oil produced within the State of Arkansas from a well not producing in excess of the amount so allowed, which is "legal oil";

(6) "Illegal product" means any product of oil or gas, any part of which was processed or derived, in whole or in part, from illegal oil or illegal gas or from any product thereof as distinguished from "legal product", which is a product processed or derived to no extent from illegal oil or illegal gas;

(7) "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the reservoir;

(8) "Operator" means the person who has the right as an owner or by agreement with an owner to enter upon the lands of another for the purposes of exploring, drilling, and developing for the production of brine, oil, gas, and all other petroleum hydrocarbons;

(9) "Owner" means the person who has the right to drill into and to produce from any pool and to appropriate the production either for himself or herself, or for himself or herself and another, or others;

(10) "Person" means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, federal agency, or representative of any kind;

(11)(A) "Pool" means an underground reservoir containing a common accumulation of crude petroleum oil or natural gas, or both.

(B) Each zone of a general structure which is completely separated from any other zone in the structure is covered by the term "pool";

(12) "Producer" means the owner of wells capable of producing oil or gas, or both;

(13) "Product" means any commodity made from oil or gas and includes refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casing-head gasoline, natural gas gasoline, naphtha, distillate, gasoline, kerosene, benzene, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of oil with one (1) or more liquid products or by-products derived from oil or gas, and blends or mixtures of two (2) or more liquid products or by-products derived from oil or gas, whether enumerated in this subdivision (13) or not;

(14) "Tender" means a permit or certificate of clearance for the transportation of oil, gas, or products approved and issued or registered under the authority of the commission; and

(15) "Waste", in addition to its ordinary meaning, means "physical waste" as that term is generally understood in the oil and gas industry. "Waste" includes:

(A) The inefficient, excessive, or improper use or dissipation of reservoir energy and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which results, or tends to result, in reducing the quantity of oil or gas ultimately to be recovered from any pool in this state;

(B) The inefficient storing of oil and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner causing, or tending to cause, unnecessary or excessive surface loss or destruction of oil or gas;

(C) Abuse of the correlative rights and opportunities of each owner of oil and gas in a common reservoir due to nonuniform, disproportionate, and unratable withdrawals causing undue drainage between tracts of land;

(D) Producing oil or gas in such manner as to cause unnecessary water channeling or coning;

(E) The operation of any oil well or wells with an inefficient gas-oil ratio;

(F) The drowning with water of any stratum or part thereof capable of producing oil or gas;

(G) Underground waste however caused and whether or not defined;

(H) The creation of unnecessary fire hazards;

(I) The escape into the open air of gas in excess of the amount that is necessary for the efficient drilling or operation of a well producing both oil and gas;

(J) The use of gas for the manufacture of carbon black; and

(K) Permitting gas produced from a gas well to escape into the air.

History. Acts 1939, No. 105, § 9; 1981, No. 523, § 2; A.S.A. 1947, § 53-109; Acts 2005, No. 137, § 1; 2019, No. 315, §§ 1234, 1235.

Amendments. The 2019 amendment deleted "regulation" following "rule" in (4) and (5).

RESEARCH REFERENCES

Ark. L. Rev. Thomas A. Daily, Symposium Article: Rules Done Right: How Arkansas Brought Its Oil and Gas Law into a Horizontal World, 68 Ark. L. Rev. 259 (2015).

Phillip E. Norvell, Symposium Article: The History of Oil and Gas Conservation Legislation in Arkansas, 68 Ark. L. Rev. 349 (2015).

David E. Pierce, Symposium Article: Developing a Correlative Rights Doctrine to Accommodate Development of Oil and Gas in Arkansas, 68 Ark. L. Rev. 407 (2015).

Strudwick Marvin Rogers, Symposium Article: Fieldwide Unitization, 68 Ark. L. Rev. 425 (2015).

15-72-103. Penalty.

(a)(1)(A) A person who violates this subchapter or a rule or order of the Oil and Gas Commission made under this subchapter, in the event a penalty for the violation is not otherwise provided for in this subchapter, is subject to a penalty not to exceed two thousand five hundred dollars ($2,500) a day for each day of violation and for each violation.

(B) A person who transports a liquid or other substance and violates a rule or order of the commission by dumping or disposing of the liquid or other substance improperly or without authorization at a well or well site is subject to a penalty not to exceed one hundred thousand dollars ($100,000) for each violation.

(2)(A) If the penalty is not recovered by the commission within the time frame specified by the commission, the penalty may be recovered in a suit in the circuit court of the county where the defendant resides or in the county of the residence of any defendant if there is more than one (1) defendant, or in the circuit court of the county where the violation took place.

(B) The place of suit shall be selected by the commission.

(3) The suit, by direction of the commission, shall be instituted and conducted in the name of the commission by the attorney for the commission or by the Attorney General or under his or her direction by the prosecuting attorney of the county where the suit is instituted.

(b) The payment of any penalty as provided for in this section shall not have the effect of changing illegal oil into legal oil, illegal gas into legal gas, or illegal product into legal product, nor shall the payment have the effect of authorizing the sale, purchase, acquisition, transportation, refining, processing, or handling in any other way of such illegal oil, illegal gas, or illegal product, but to the contrary, penalty shall be imposed for each prohibited transaction relating to the illegal oil, illegal gas, or illegal product.

(c) Any person knowingly and willfully aiding or abetting any other person in the violation of any statute of this state relating to the conservation of oil or gas, or the violation of any provision of this act, or

any rule or order made thereunder shall be subject to the same penalties as are prescribed herein for the violation by the other person.

History. Acts 1939, No. 105, § 22; 1981, No. 523, § 5; A.S.A. 1947, § 53-122; Acts 2007, No. 859, § 3; 2013, No. 1262, § 1; 2019, No. 315, §§ 1236, 1237.

Amendments. The 2019 amendment deleted "regulation" following "rule" in (a)(1)(B) and (c).

RESEARCH REFERENCES

Ark. L. Rev. Phillip E. Norvell, Symposium Article: The History of Oil and Gas Conservation Legislation in Arkansas, 68 Ark. L. Rev. 349 (2015).

15-72-104. Falsifying or failing to keep records — Willfully violating the Safe Drinking Water Act.

(a) Any person shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of competent jurisdiction, to a fine of not more than five thousand dollars ($5,000), or to imprisonment for a term of not more than six (6) months, or to both fine and imprisonment if that person, for the purpose of evading this act, or of evading any rule or order made hereunder:

(1) Shall intentionally make or cause to be made any false entry or statement of fact in any report required to be made by this act or by any rule or order made hereunder;

(2) Shall make or cause to be made any false entry in any account, record, or memorandum kept by any person in connection with the provisions of this act or of any rule or order made hereunder;

(3) Shall omit to make, or cause to be omitted, full, true, and correct entries in the accounts, records, or memoranda, of all facts and transactions pertaining to the interest or activities in the petroleum industry of that person as may be required by the Oil and Gas Commission under authority given in this act or by any rule or order made hereunder;

(4) Shall remove out of the jurisdiction of the state or shall mutilate, alter, or by any other means falsify any book, record, or other paper pertaining to the transactions regulated by this act, or by any rule or order made hereunder.

(b) Any person who willfully violates any program requirement under the applicable provisions of the Safe Drinking Water Act, Pub. L. No. 93-523, as amended, for the control of underground injection shall be deemed guilty of a misdemeanor and shall be subject to the penalty provided in subsection (a) of this section.

History. Acts 1939, No. 105, § 21; 1981, No. 523, § 4; A.S.A. 1947, § 53-121; Acts 2019, No. 315, § 1238.

Amendments. The 2019 amendment deleted "regulation" following "rule" throughout (a).

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Lead Limitations and "Lead and Copper" Rule of Safe Drinking Water Act. 16 A.L.R. Fed. 3d Art. 3 (2016).

Citizen's Cause of Action Under Safe Drinking Water Act, 42 U.S.C. § 300j-8. 16 A.L.R. Fed. 3d Art. 4 (2016).

Validity, Construction, and Application of Safe Drinking Water Act's Provisions Related to Public Water Supply Enforcement, 42 U.S.C. §§ 300g to 300g-5 and Related Regulations, 19 A.L.R. Fed. 3d Art. 6 (2017).

Validity, Construction, and Application of Part C of the Safe Drinking Water Act Relating to Protection of Underground Sources of Drinking Water, 42 U.S.C. §§ 300h to 300h-8, and Related Regulations, 20 A.L.R. Fed. 3d Art. 12 (2017).

15-72-105. Prohibition on wasting oil or gas.

RESEARCH REFERENCES

Ark. L. Rev. Phillip E. Norvell, Symposium Article: The History of Oil and Gas Conservation Legislation in Arkansas, 68 Ark. L. Rev. 349 (2015).

15-72-106. Court review by aggrieved person — Injunction.

(a) Any interested person adversely affected by any statute of this state with respect to conservation of oil or gas, or both; by any provisions of this act; by any rule or order made by the Oil and Gas Commission hereunder; or by any act done or threatened hereunder, and who has exhausted his or her administrative remedy, may obtain court review and seek relief by a suit for injunction against the commission as defendant or against the members of the commission by suit in the circuit court of the county in which the property involved is located.

(b) The suit shall have precedence over all other causes, proceedings, or suits on the docket of a different nature, and the attorney representing the commission may have the case set for trial after ten (10) days' notice to the plaintiff or his or her attorney.

(c) In the trial, the burden of proof shall be upon the plaintiff, and all pertinent evidence with respect to the validity and reasonableness of the order of the commission complained of shall be admissible.

(d) The statute, provision of this act, or the rule or order complained of shall be taken as prima facie valid, and such presumption shall not be overcome in connection with any application for injunctive relief, including temporary restraining order, by verified bill or affidavit of or in behalf of the applicant.

(e) The right of review accorded by this section shall be inclusive of all other remedies, but the right of appeal shall lie as hereinafter set forth.

History. Acts 1939, No. 105, § 17; A.S.A. 1947, § 53-117; Acts 2019, No. 315, §§ 1239, 1240.

Amendments. The 2019 amendment deleted "regulation" following "rule" in (a) and (d).

15-72-107. Notice prerequisite to temporary restraining order or injunction.

(a) No temporary restraining order or injunction of any kind shall be granted against the Oil and Gas Commission or members thereof, or against the Attorney General, or against any agent, employee, or representative of the commission, restraining the commission or any of its members, agents, employees, or representatives, or the Attorney General from enforcing any statute of this state or any rule or order made thereunder except after three (3) days' notice served upon some person in the principal office of the commission of the time, place, and court before which application for the order shall be made.

(b) If the commission shall so request at the hearing, it shall be entitled to a trial on the merits within ten (10) days after the granting of any temporary order. If the plaintiff is not ready for trial at that time, the court shall be authorized to dissolve the temporary restraining order.

History. Acts 1939, No. 105, § 18; A.S.A. 1947, § 53-118; Acts 2019, No. 315, § 1241.

Amendments. The 2019 amendment deleted "regulation" following "rule" in (a).

15-72-108. Injunctions for enforcement.

(a) Whenever it shall appear that any person is violating, or threatening to violate, any statute of this state with respect to the conservation of oil or gas, or both, or any provision of this act, or any rule or order made thereunder by any act done in the operation of any well producing oil or gas or by omitting any act required to be done thereunder, the Oil and Gas Commission through its counsel or the Attorney General may bring suit against that person in the circuit court in the county in which the well in question is located, to restrain the person from continuing the violation or from carrying out the threat of violation.

(b) In the suit the commission may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions, as the facts may warrant, including, when appropriate, an injunction restraining any person from moving or disposing of illegal oil, illegal gas, or illegal product. Any or all such commodities may be ordered to be impounded or placed under the control of an agent appointed by the court if, in the judgment of the court, the action is advisable.

(c) If the defendant cannot be personally served with summons in that county, personal jurisdiction of that defendant in the suit may be obtained by service made on any employee or agent of that defendant working on or about the oil or gas well involved in the suit and by the commission's mailing a copy of the complaint in the action to the defendant at the address of the defendant then recorded with the Director of the Oil and Gas Commission.

History. Acts 1939, No. 105, § 19; A.S.A. 1947, § 53-119; Acts 2019, No. 315, § 1242.

Amendments. The 2019 amendment deleted "regulation" following "rule" in (a).

15-72-110. Appeals.

In all proceedings brought under authority of this act, of any oil or gas conservation statute of this state, or of any rule or order issued thereunder and in all proceedings instituted for the purpose of contesting the validity of any provision of the act, of any oil or gas conservation statute, or of any rule or order issued thereunder, appeals may be taken in accordance with the general laws of the State of Arkansas relating to appeals. However, in all appeals from judgments or decrees in suits to contest the validity of any provision of this act, or any rule of the Oil and Gas Commission hereunder, the appeals when docketed in the Supreme Court shall take precedence over other cases on the docket of that court and may be advanced as that court may order and direct.

History. Acts 1939, No. 105, § 20; A.S.A. 1947, § 53-120; Acts 2019, No. 315, § 1243.

Amendments. The 2019 amendment deleted "regulation" following "rule" twice in the first sentence and deleted "or regulation" following "rule" in the second sentence.

CASE NOTES

In General.

Circuit court erred in dismissing with prejudice, based on sovereign immunity, an administrative appeal from final orders of the Oil and Gas Commission because sovereign immunity was not implicated where the commission was not "made a defendant" as contemplated by the state constitution; the commission's role in the proceeding was that of a tribunal or a quasi-judicial decision-maker rather than a real party in interest. It followed that the circuit court's rulings declaring the adjudicatory provisions of the Administrative Procedure Act unconstitutional and invalidating the commission's orders as void ab initio also were reversed. Ark. Oil & Gas Comm'n v. Hurd, 2018 Ark. 397, 564 S.W.3d 248 (2018).

Subchapter 2 — Wells and Drilling Generally

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and

operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

15-72-203. Prerequisite to exploring or drilling — Notice to surface owner — Definition.

(a) Before entering upon a site for the purpose of exploration or for oil or gas drilling, except in instances where there are nonresident surface owners, nonresident surface tenants, unknown heirs, imperfect titles, or surface owners or surface tenants whose whereabouts cannot be ascertained with reasonable diligence, the operator shall give to the surface owner written notice of his or her intent of exploration or undertaking drilling operations on premises owned by the surface owner. The notice shall contain the proposed location and the approximate date that the operator proposes to commence exploration or drilling operations.

(b) The notice shall be given in writing by certified United States mail, or personally, to the surface owner at the address of the surface owner as is reflected in the records of the tax collector of the county in which the lands are located.

(c)(1)(A) As used in this subsection, "shale operations" means drilling activities relating to the production of gas and other petroleum hydrocarbons directed at an unconventional shale gas formation in a county listed in Oil and Gas Commission General Rule B-43(c) or (d) if entry upon the surface owner's surface estate is required and the drilling activities are conducted on or after August 16, 2013.

(B) "Shale operations" does not include:

(i) The periodic inspection, maintenance, or repair of completion activities;

(ii) Preparatory activities such as inspection, surveying, or staking; or

(iii) Drilling additional wells, redrilling, or recompletion operations on an existing drilling pad if the operator does not expand the existing pad.

(2) The Oil and Gas Commission shall promulgate rules and orders consistent with this section to require an operator intending to conduct shale operations to provide a single enhanced written notice as described in subdivision (c)(3) of this section in lieu of the written notice required under subsection (a) of this section.

(3) The rules and orders of the commission shall require the enhanced written notice to:

(A) Describe:

(i) The proposed shale operations; and

(ii) The location of the proposed well and the pad location, including the section, township, range, and plat of the pad location, if available;

(B) Be given to the surface owner at least fourteen (14) days before the operator proposes to begin shale operations on the surface owner's property;

(C) Contain a statement that the operator has a pending or approved drilling permit for the proposed shale operations on the surface owner's property and that the permit shall be available for inspection by the surface owner on request by the surface owner;

(D) Contain the name, address, telephone number, fax number, and electronic mailing address of the operator or the operator's agent; and

(E) Be sent by certified United States mail or delivered personally to the surface owner at the address of the surface owner stated in the public records of the county collector of the county in which the surface owner's property is located.

(4) After written notice of the operator's intent to begin shale operations is given under this subsection, an operator is not required to give any other notice to begin, conduct, or complete shale operations on the surface owner's property.

(5) Written notice under this subsection is:

(A) Presumed delivered three (3) days after mailing by certified mail;

(B) Effective immediately upon hand delivery;

(C) Not required for emergency situations in which the shale operations are required to protect the public health and safety or the environment; and

(D) Not required if a surface owner has a contractual relationship with an operator that specifies when or how the operator shall give notice regarding the beginning of shale operations.

(6) After receipt of a written notice of the operator's intent to begin shale operations under this subsection, the surface owner shall not make alterations to a proposed drilling location to interfere with the shale operations for which the surface owner received the notice.

(d) This section does not supersede, modify, or supplant the notice provisions of General Rule B-42 of the commission.

History. Acts 1983, No. 902, § 2; A.S.A. 1947, § 53-217; Acts 2013, No. 1299, § 2; 2019, No. 315, § 1244.

A.C.R.C. Notes. Acts 2013, No. 1299, § 1, provided: "Title. This act shall be known and may be cited as the 'Landowner Notification Act'."

Amendments. The 2019 amendment deleted "regulations" following "rules" in (c)(2) and the introductory language of (c)(3).

15-72-214. Surface owner's claim for damages caused by operator neglect.

(a) Each operator shall remain liable under the proof of financial responsibility as filed with the Oil and Gas Commission until released by the Director of Production and Conservation.

(b) Any surface owner seeking to recover thereunder for damages caused by the neglect of the operator must file written notice of claim therefor with the commission within one (1) year of the date of issuance of the permit for such drilling operations. However, that claim shall be subordinate to the rights of the commission under the proof of financial responsibility to secure compliance by the operator with the provisions of §§ 15-71-101 — 15-71-112, 15-72-101 — 15-72-110, 15-72-205, 15-72-212, 15-72-216, 15-72-301 — 15-72-324, and 15-72-401 — 15-72-407, as amended, and the rules of the commission promulgated thereunder.

History. Acts 1985, No. 559, § 1; A.S.A. 1947, § 53-220; Acts 2019, No. 315, § 1245.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in the second sentence of (b).

RESEARCH REFERENCES

Ark. L. Rev. Tara Righetti, Environmental Sustainability and Private Governance: Contracting for Sustainable Surface Management, 71 Ark. L. Rev. 367 (2018).

15-72-216. Requirement that dry or abandoned wells be plugged — Notice of abandonment.

(a) Each abandoned well and each dry hole promptly shall be plugged in the manner and within the time required by rules to be prescribed by the Oil and Gas Commission. The owner of the well shall give notice upon a form the commission may prescribe of the drilling of each dry hole and of the owner's intention to abandon.

(b) No well shall be abandoned until the notice has been given and no fee shall be required to be paid with this notice.

History. Acts 1939, No. 105, § 25; 1979, No. 113, § 4; 1981, No. 523, § 6; A.S.A. 1947, § 53-125; Acts 2019, No. 315, § 1246.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a).

15-72-219. Compensation of surface owners and surface tenants for damages — Restoration of land.

(a) A surface owner or surface tenant is entitled to reasonable compensation where a spill of crude oil or produced water has occurred and has caused damages to real property, growing crops, trees, shrubs, fences, roads, structures, improvements, livestock, personal property or measurable damage to the productive capacity of the soil.

(b) In addition to any compensation or damages paid by the operator under subsection (a) of this section, the operator shall restore the damaged land in accordance with all applicable rules of the:

(1) Division of Environmental Quality; or

(2) Oil and Gas Commission.

(c) Any rules adopted by the division or the commission pertaining to spills of crude oil or produced water shall:

(1) Provide, as nearly as practicable, for remediation of any spill of crude oil or produced water to the condition of the real property before the spill; and

(2) Specify a reasonable time frame for commencing and completing remediation of any spill of crude oil or produced water to the condition of the real property before the spill.

(d) If the party responsible for damage to real property caused by a spill of crude oil or produced water fails to restore the real property in accordance with applicable rules, then the surface owner or surface tenant may bring an action for restoration or remediation:

(1) In that action, if the surface owner or surface tenant proves by a preponderance of the evidence that the party responsible for the damage has failed to restore and remediate the real property, then the surface owner or surface tenant is entitled to an order requiring restoration or remediation to appropriate standards of the applicable agency; and

(2) In addition to the relief provided in subdivision (d)(1) of this section, the surface owner or surface tenant may be allowed a reasonable attorney's fee together with costs associated with maintaining an action for restoration or remediation.

(e) This section shall become effective on September 17, 2007, and will apply to spills of crude oil and spills of produced water that occur after that date.

(f) Nothing contained in this section is intended to limit or restrict the rights of any surface owner or surface tenant to maintain a cause of action for any damage to real property that is not addressed by the rules adopted by the division or the commission pertaining to spills of crude oil or produced water.

(g) Nothing contained in this section shall alter, affect, or modify the terms of any oil or gas lease pertaining to restoration or remediation of damaged real property that are more stringent than the provisions of this section.

(h) The provisions of this section are remedial in nature.

History. Acts 2007, No. 507, § 1; 2009, No. 481, § 8; 2019, No. 315, §§ 1247, 1248; 2019, No. 910, §§ 3175-3177.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" throughout the section, and deleted "or regulations" following "rules" in the introductory language of (c).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (b)(1); and substituted "division" for "department" in the introductory language of (c) and in (f).

RESEARCH REFERENCES

Ark. L. Rev. Tara Righetti, Environmental Sustainability and Private Governance: Contracting for Sustainable Surface Management, 71 Ark. L. Rev. 367 (2018).

Subchapter 3 — Pools and Drilling Units

15-72-302. Just and equitable shares — Preventing waste, avoiding risks, etc. — Drilling units.

(a) Whether or not the total production from a pool is limited or prorated, no rule or order of the Oil and Gas Commission shall be such in terms or effect:

(1) That it shall be necessary at any time for the producer from or the owner of a tract of land in the pool, in order that he or she may obtain the tract's just and equitable share of the production of the pool, as the share is set forth in this section, to drill and operate any well or wells on the tract in addition to the well or wells as can without waste produce the share; or

(2) As to occasion net drainage from a tract unless there is drilled and operated upon the tract a well or wells in addition to the wells thereon as can without waste produce the tract's just and equitable share, as set forth in this section, of the production of the pool.

(b)(1) For the prevention of waste and to avoid the augmenting and accumulation of risks arising from the drilling of an excessive number of wells, after a hearing the commission shall establish a drilling unit or units for each pool except in those pools that, prior to February 20, 1939, have been developed to an extent and where conditions are such that it would be impracticable or unreasonable to use a drilling unit at the present stage of development.

(2)(A) As used in this subchapter, "drilling unit" means a single governmental section or the equivalent unless a larger or smaller area is requested by an owner, as defined in § 15-72-102, within the drilling unit to be established and a larger or smaller area is established by order of the commission. The drilling unit shall constitute a developed unit as long as a well is located thereon that is capable of producing oil or gas in paying quantities.

(B) The commission shall have the continuing authority to:

(i) Designate the number of wells that may be drilled and produced within a drilling unit; and

(ii) Regulate the spacing among multiple wells drilled and produced within a drilling unit.

(c)(1) Each well permitted to be drilled upon any drilling unit shall be drilled at a location that is in compliance with rules adopted by the commission, with such exception as may be reasonably necessary where it is shown, after notice and an opportunity for a hearing, and the commission finds that a well drilled at a different location is likely to prevent waste or protect correlative rights of owners within the unit, or both.

(2) Whenever an exception is granted, the commission shall take action to offset any advantage that the person securing the exception may have over other producers by reason of drilling the well as an exception, and so that drainage from developed units to the tract with respect to which the exception is granted will be prevented or minimized and the producer of the well drilled as an exception will be allowed to produce no more than his or her just and equitable share of the oil and gas in the pool, as the share is set forth in this section.

(d)(1) Subject to the reasonable requirements for prevention of waste, a producer's just and equitable share of the oil and gas in the pool, also sometimes referred to as a tract's just and equitable share, is that part of the authorized production for the pool, whether it is the total that could be produced without any restriction on the amount of production or whether it is an amount less than that which the pool could produce if no restriction on amount were imposed, which is substantially in the proportion that the quantity of recoverable oil and gas in the developed area of the producer's tract in the pool bears to the recoverable oil and gas in the total developed area of the pool, insofar as these amounts can be practically ascertained.

(2) To that end, the rules, permits, and orders of the commission shall be such as will prevent or minimize reasonably avoidable net drainage from each developed unit, that is, drainage that is not equalized by counter drainage and will give to each producer the opportunity to use his or her just and equitable share of the reservoir energy.

(e)(1) After public hearing held pursuant to notice given as required by law and by any rules or orders of the commission, the commission may establish a drilling unit as defined in subsection (b) of this section for an exploratory well to be drilled therein.

(2) Any drilling unit so established shall be composed of a governmental section or the equivalent thereof unless a larger or smaller area is requested by an owner, as defined in § 15-72-102, within the drilling unit to be established and a larger or smaller area is established by order of the commission, determined by the commission to be prospective of oil or gas, or both. The commission shall have the authority to integrate separately owned tracts embraced therein when the owners thereof fail or refuse voluntarily to do so provided that persons who own at least an undivided fifty-percent interest in the right to drill and produce oil or gas, or both, from the total proposed unit area agree thereto.

(3) However, any such order of the commission and drilling unit as established for exploratory purposes thereunder shall remain in force

for a period no longer than the later of one (1) year following the effective date thereof or one (1) year following the cessation of drilling operations or production within the unit, whereupon the order of the commission and the provisions thereof shall automatically terminate.

History. Acts 1939, No. 105, § 14; 1941, No. 305, § 1; 1951, No. 28, § 1; 1985, No. 881, § 1; A.S.A. 1947, § 53-114; Acts 2003, No. 964, § 1; 2009, No. 1175, § 15; 2019, No. 315, §§ 1249, 1250.

Amendments. The 2019 amendment deleted "regulation" following "rule" in the introductory language of (a); and deleted "regulations" following "rules" in (d)(2).

RESEARCH REFERENCES

Ark. L. Rev. Thomas A. Daily, Symposium Article: Rules Done Right: How Arkansas Brought Its Oil and Gas Law into a Horizontal World, 68 Ark. L. Rev. 259 (2015).

15-72-303. Authority to integrate production in drilling units.

RESEARCH REFERENCES

Ark. L. Rev. Thomas A. Daily, Symposium Article: Rules Done Right: How Arkansas Brought Its Oil and Gas Law into a Horizontal World, 68 Ark. L. Rev. 259 (2015).

Phillip E. Norvell, Symposium Article: The History of Oil and Gas Conservation Legislation in Arkansas, 68 Ark. L. Rev. 349 (2015).

CASE NOTES

Constitutionality.

Circuit court did not err in affirming an order of the Oil and Gas Commission integrating an owner's unleased mineral interests into a drilling unit because the owner failed to satisfy his burden of showing that this section and § 15-72-304 clearly violated Ark. Const., Art. 2, § 22; the Commission's integration of the owner's mineral interest was not a compensable taking but a constitutional exercise of the State's police power. Gawenis v. Ark. Oil & Gas Comm'n, 2015 Ark. 238, 464 S.W.3d 453 (2015).

Circuit court did not err in affirming an order of the Oil and Gas Commission integrating an owner's unleased mineral interests into a drilling unit; the owner cited no authority for the proposition that the forced-integration provisions constituted a corporate "appropriation" of his property under Ark. Const., Art. 12, § 9, and thus, he had no constitutional right to a jury trial on the issue of compensation. Gawenis v. Ark. Oil & Gas Comm'n, 2015 Ark. 238, 464 S.W.3d 453 (2015).

15-72-304. Integration orders generally.

(a) All orders requiring integration shall be made after notice and an opportunity for a hearing and shall be upon terms and conditions that are just and reasonable and that will afford the owner of each tract or interest in the drilling unit the opportunity to recover or receive his or her just and equitable share of the oil and gas in the pool without unnecessary expense and will prevent or minimize reasonably avoidable drainage from each developed unit which is not equalized by counter drainage.

(b) In the event the drilling of a well has not been commenced or, if commenced, the well has not been completed as a well capable of producing oil and gas in commercial quantities on the lands comprising the drilling unit on the effective date of the order requiring integration, the order shall:

(1) Authorize the drilling or completion and the equipping and operation of a well on the drilling unit;

(2) Provide who shall drill, complete, and operate the well;

(3) Prescribe the time and manner in which all owners in the drilling unit who may desire to pay their share of the costs of such operations and participate therein may elect to do so; and

(4)(A) Provide that an owner who does not affirmatively elect to participate in the risk and cost of the operations shall transfer his or her rights in the drilling unit and the production from the unit well to the parties who elect to participate in the risk and cost of the operations for a reasonable consideration and on a reasonable basis that shall be determined, in the absence of agreement between the parties, by the Oil and Gas Commission or by the Director of Production and Conservation, if the order is eligible for approval in accordance with rules adopted by the commission.

(B) The transfer may be either a permanent transfer or may be for a limited period pending recoupment out of the share of production attributable to the interest of the nonparticipating owner by the participating parties of an amount equal to the share of the costs that would have been borne by the nonparticipating party had he or she participated in the operations, plus an additional sum to be fixed by the commission or by the director if the order is eligible for approval in accordance with rules adopted by the commission.

(c) In the event there is a well capable of producing oil or gas in commercial quantities on the lands comprising the drilling unit on the effective date of the order requiring integration, the order shall:

(1) Authorize the operation of the well;

(2) Provide who shall operate the well; and

(3) Provide that within the time stipulated in the order any owner in the drilling unit who did not participate in the drilling of the well shall either reimburse the drilling parties in cash for his or her share of the actual cost of drilling, completing, and equipping the well or shall transfer his or her rights in such drilling unit and the production from the well to the drilling parties until those parties have received out of the share of production attributable to the interest so transferred an amount equal to the share of the costs that would have been borne by the transferring party had he or she participated in drilling, completing, equipping, and operating the well, plus an additional sum to be fixed by the commission.

(d) In the event there is an unleased mineral interest or interests in any drilling unit, the owner thereof shall be regarded as the owner of a royalty interest to the extent of a one-eighth interest in and to the unleased mineral interest. This royalty interest shall not be affected by the provisions of subsections (b) and (c) of this section.

History. Acts 1939, No. 105, § 15; 1963, No. 536, § 1; A.S.A. 1947, § 53-115; Acts 2015, No. 906, § 2.

Amendments. The 2015 amendment inserted "after an opportunity for a" preceding "hearing" in (a); redesignated (b)(4) as (b)(4)(A) and (B); in (b)(4)(A), substituted the second occurrence of "in the risk and cost of the operations" for "therein" and added "or by the Director of the Oil and Gas Commission, if the order is eligible for approval in accordance with rules adopted by the commission"; and added "or by the director if the order is eligible for approval in accordance with rules adopted by the commission" at the end of (b)(4)(B).

RESEARCH REFERENCES

Ark. L. Rev. Thomas A. Daily, Symposium Article: Rules Done Right: How Arkansas Brought Its Oil and Gas Law into a Horizontal World, 68 Ark. L. Rev. 259 (2015).

CASE NOTES

Analysis

Constitutionality.
Reasonable Compensation.

Constitutionality.

Circuit court did not err in affirming an order of the Oil and Gas Commission integrating an owner's unleased mineral interests into a drilling unit because the owner failed to satisfy his burden of showing that § 15-72-303 and this section clearly violated Ark. Const., Art. 2, § 22; the Commission's integration of the owner's mineral interest was not a compensable taking but a constitutional exercise of the State's police power. Gawenis v. Ark. Oil & Gas Comm'n, 2015 Ark. 238, 464 S.W.3d 453 (2015).

Circuit court did not err in affirming an order of the Oil and Gas Commission integrating an owner's unleased mineral interests into a drilling unit; the owner cited no authority for the proposition that the forced-integration provisions constituted a corporate "appropriation" of his property under Ark. Const., Art. 12, § 9, and thus, he had no constitutional right to a jury trial on the issue of compensation. Gawenis v. Ark. Oil & Gas Comm'n, 2015 Ark. 238, 464 S.W.3d 453 (2015).

Reasonable Compensation.

This section does not require the Arkansas Oil and Gas Commission to award the highest bonus historically paid when unleased mineral owners are directed to transfer their rights in a drilling unit and the product from the unit well to the parties who elect to participate therein; it requires only reasonable consideration and a reasonable basis. Walls v. Ark. Oil & Gas Comm'n, 2012 Ark. 418 (2012).

Decision of the Arkansas Oil and Gas Commission that the owners' compensation be at a rate of $ 500 per net mineral acre and a one-eighth royalty was supported by substantial evidence as: (1) this section did not require the Commission to award the highest bonus historically paid; (2) this section required only reasonable consideration and a reasonable basis; and (3) there was evidence that the corporation had about 265 acres under lease and that the best terms paid were $ 800 and a one-sixth royalty, $ 500 and a one-eighth royalty, and $ 225 and a three-sixteenths royalty. Walls v. Ark. Oil & Gas Comm'n, 2012 Ark. 418 (2012).

15-72-305. Allocation of production and cost following integration order — Procedure.

(a)(1) The order of the Oil and Gas Commission creating a drilling unit shall provide that effective as of the commencement of the drilling of a well upon the drilling unit or, if a well capable of producing oil and gas in commercial quantities has already been completed upon some part of the lands included within the drilling unit, all royalty, overriding

royalty, production payment, or similar interests in the drilling unit shall be integrated without the necessity of any additional order or action by the commission or owners. In the event any unit includes an unleased mineral interest upon the effective date thereof, one-eighth (⅛) of the unleased mineral interest shall be deemed as royalty for the purposes of this subsection.

(2) For the purpose of making distribution to the owners of royalty, overriding royalty, production payment, or similar interests, there shall be allocated to each tract in the established drilling unit that percentage of the total production from such drilling unit, except any part thereof unavoidably lost or used for production or development purposes, which the area of each tract bears to the total area of the drilling unit. The interests shall be paid or delivered to each owner thereof in conformance with the provisions of the appropriate lease, agreement, or contract creating it, but computed upon the production allocated to each tract as hereinabove provided, rather than upon the actual production therefrom.

(3) One-eighth (⅛) of all gas sold on or after the first day of the calendar month next ensuing after March 6, 1985, from any such unit shall be considered royalty gas, and the net proceeds received from the sale thereof shall be distributed to the owners of the marketable title in and to the leasehold royalty and royalty as defined under § 15-72-304(d). Marketability of title shall be determined according to principles of real property law governing title to oil and gas interests. Unless all royalty owners within the drilling unit agree to a different method for distribution of the royalty, the distribution shall be coordinated by the operator of the well as follows:

(A)(i) Within thirty (30) days of the receipt of the proceeds from gas sales, each working interest owner shall furnish to the working interest owner designated as operator, in a form acceptable to the operator, the following information:

(a) The names and addresses of all owners of royalty under the working interest owner's leasehold interests;

(b) Each royalty owner's tax identification or Social Security number and any other information needed to meet the requirements of the Internal Revenue Service or other governmental agencies; and

(c) The fractional or decimal interests in the unit of each tract in which interests are owned and each royalty owner's fractional or decimal interest therein.

(ii) Thereafter, each working interest owner shall notify the operator of any changes of ownership and provide the necessary information to facilitate the necessary changes promptly upon receiving proof thereof.

(iii) If any working interest owner should fail or refuse to discharge its obligation to provide the information outlined in subdivision (a)(3)(A)(i) of this section in a timely manner, to facilitate payments, the operator may, at its option, either:

(a) Notify the working interest owner by certified or registered mail of the name, address, and decimal interests of the royalty owner

believed to be entitled to receive payments pursuant to the terms hereof under the working interest owner's leasehold on the basis of the best information then available to the operator. If the working interest owner fails to respond to the notification within thirty (30) days of the receipt thereof, the operator shall be entitled to pay royalty moneys in accordance with its prior notification and usual procedures. Further, the operator's payment in this manner shall constitute a complete defense to any claim or in any legal proceeding or cause of action and the responsible working interest owner shall indemnify and hold the operator harmless from all liability and reimburse the operator for any and all costs and expenses, including attorney's fees, interest, or penalty incurred with respect to the proceeding or action; or

(b) File an application with the commission, setting forth sufficient facts to identify the well concerned and the responsible working interest owner, requesting that the commission issue an order requiring the working interest owner to appear at the next regularly scheduled hearing and show cause with respect to its failure to timely comply with the provisions of this section. Subsequent to the hearing, the commission shall impose upon a working interest owner who has failed to meet its obligations hereunder such sanctions as are reasonably calculated to enforce compliance with this section. These sanctions shall include, but not be limited to, a penalty under § 15-74-709. The commission shall have the authority to suspend the imposition of any sanction for a maximum period of sixty (60) days in order to allow the noncompliant owner the opportunity to furnish proof to the commission of his or her compliance with any commission order. All penalties levied by the commission as a result of this provision shall be collected by the commission and shall be deposited into the State Treasury to the credit of the Oil and Gas Commission Fund. The commission may promulgate such other rules as it deems appropriate and necessary to carry out the purposes of this section.

(iv) The terms of this subdivision (a)(3)(A) shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, or liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons; and

(B)(i) Commencing no later than six (6) months after the date of first sale, and thereafter no later than the earlier of thirty (30) days after first payment is received or thirty (30) days after the sixty-day period within which the first purchaser is to make payment pursuant to §§ 15-74-501 and 15-74-601 — 15-74-603, or a total of ninety (90) days after the end of the calendar month within which subsequent production is sold, each working interest owner or marketing party who has sold gas shall remit or cause to be remitted to the operator one-eighth (⅛) of the revenue realized or royalty moneys from gas sales computed at the mouth of the well, less all lawful deductions, including, but not limited to, all federal and state taxes levied upon the production or proceeds and shall indemnify and hold the other

working interest owner free from any liability therefor. However, if any portion of the price received by a marketing party is subject to possible refund to the gas purchaser pursuant to the regulations, rules, or orders of any governmental authority, the refundable portion need not be included in the amount remitted to the operator for distribution hereunder until the possibility of refund has terminated. The funds or amounts as so remitted shall be held in trust by the operator for the account of the royalty owner or owners entitled thereto until distributed and paid as provided in this section.

(ii) If any operator should fail or refuse to discharge its obligation to remit revenues in a timely manner as provided in this section, the working interest owner whose royalty owner's obligations have not been paid may, to facilitate payment, either:

(a) File an application with the commission, setting forth sufficient facts to identify the well concerned and the responsible operator, requesting that the commission issue an order requiring the operator to appear at the next regularly scheduled hearing and show cause with respect to its failure to timely comply with the provisions of this section. Subsequent to the hearing, the commission shall impose upon an operator who has failed to meet its obligations hereunder such sanctions as are reasonably calculated to enforce compliance with this section. The sanctions shall include, but not be limited to, a penalty under § 15-74-709. The commission shall have the authority to suspend the imposition of any sanction for a maximum period of sixty (60) days in order to allow the noncompliant the opportunity to furnish proof to the commission of his or her compliance with any commission order. All civil penalties levied by the commission as a result of this provision shall be collected by the commission and deposited into the State Treasury to the credit of the fund. The commission may promulgate such other rules as it deems appropriate and necessary to carry out the purposes of this section; or

(b) File a legal proceeding or cause of action to compel the operator's compliance with the terms hereof. The operator shall reimburse the complaining working interest owner for any and all costs or expenses, including attorney's fees, incurred with respect to the proceeding or action.

(iii) The operator shall not be held liable for failure to distribute royalty hereunder where its failure is due to the failure of a working interest owner to timely provide or cause to be provided the information and royalty moneys described in subdivision (a)(3)(A) of this section and this subdivision (a)(3)(B). Each working interest owner shall indemnify and hold the operator harmless for all costs, including reasonable attorney's fees, incurred as a result of the failure.

(iv) The terms of this subdivision (a)(3)(B) shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, or liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons.

(4)(A) Any working interest owner may arrange for the royalty moneys to be remitted directly to the operator by the purchaser to

whom the gas is sold but, in that case, shall continue to hold the operator harmless for all costs, including reasonable attorney's fees, incurred as a result of failure to provide or cause to be provided the information and royalty moneys required by subdivisions (a)(3)(A) and (B) of this section.

(B) The terms of this subdivision (a)(4) shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons.

(5)(A) On or before the thirtieth day of the next calendar month following its receipt of the royalty moneys as provided above, the operator shall distribute the moneys by check or by any form of electronic funds transfer to all royalty owners as provided in this subsection. The distribution may be made annually for the aggregate of up to twelve (12) months of accumulated royalty moneys where the aggregate amount due any royalty owner is at least ten dollars ($10.00), but less than one hundred fifty dollars ($150). However, upon written request by the royalty owner, the payment shall be made when the aggregate amount exceeds fifty dollars ($50.00). Accumulated amounts of less than ten dollars ($10.00) may be held but shall be paid when production ceases or by the payor of payment upon relinquishing responsibility. With respect to each such distribution, the operator shall provide the following to the royalty owner in paper form or make accessible in electronic form:

(i) The name of the party entitled to payment;

(ii) Identification of the wells for which payment is being made by well number or division order;

(iii) The time period for which payment is made;

(iv) The decimal interest of the party being paid;

(v) The total production from each well for which payment is being made;

(vi) The gross price received for each unit of production from each well;

(vii) Any and all deductions from the payment which shall be itemized as to the nature of the deduction; and

(viii) An address and telephone number at which additional information may be obtained and questions may be answered.

(B) In the event that the operator stops the royalty payments for a period of more than sixty (60) days for any reason, the operator shall send a letter of explanation.

(C) If a royalty interest owner requests information or answers to questions concerning a payment made pursuant to this subdivision (a)(5) and the request is made by certified mail with return receipt requested, the party making payment must respond to the request by certified mail with return receipt requested not later than forty-five (45) days after the request is received.

(D)(i) If a royalty interest owner fails to receive an answer to his or her request for information or to his or her questions, the royalty

interest owner may file a complaint with the commission on a form provided by the commission describing:

(a) The information requested or the questions to be answered;

(b) The party responsible for making the royalty payments;

(c) The date the information or answers were requested; and

(d) The date the requested information or answers were due from the paying party.

(ii) Upon the filing of the complaint form, the commission shall issue an order requiring the party making the payments to appear at the next regularly scheduled hearing and to show cause for its failure to respond to the royalty interest owner's request for information or answers.

(iii) If the party making the payments fails to respond to the royalty interest owner's inquiry after the complaint is filed or fails to show just cause for its failure to respond at the hearing, the commission shall impose such sanctions as are reasonably calculated to enforce compliance with this provision.

(iv) These sanctions shall include, but not be limited to, a civil penalty of up to, but not more than, five hundred dollars ($500). The commission shall have the authority to suspend the imposition of any sanction for a maximum period of sixty (60) days in order to allow the noncompliant party the opportunity to furnish proof to the commission of his or her compliance with any commission order.

(v) All civil penalties levied by the commission as a result of this provision shall be collected by the commission and shall be deposited into the State Treasury to the credit of the fund.

(E) The commission may promulgate such other rules as it deems appropriate and necessary to carry out the purposes of this section.

(F) The terms of this subdivision (a)(5) shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons.

(6)(A) Payment of one-eighth (⅛) of the revenue realized from the sale of gas as provided in this section shall fully discharge all obligations of the operator and other working interest owners with respect to the payment of one-eighth leasehold royalty or royalty as described under § 15-72-304(d).

(B) The terms of this subdivision (a)(6) shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons.

(7)(A) The operator shall be entitled to reimbursement from each working interest owner, whether or not that party is marketing gas, the party's fair and equitable share of the costs of distributing the one-eighth royalty required by this subsection. The amount of these charges shall be based upon the reasonable cost of administering these provisions and shall be subject to review by the commission upon application of any working interest owner.

(B) The terms of this subdivision (a)(7) shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons.

(8)(A) Any gas taken in kind shall be excluded from royalty gas for which payment shall be made pursuant to this section, but the operator shall be promptly provided with written notification of the intent to exclude the gas.

(B) Additionally, any gas taken by a working interest owner to correct an imbalance in production between the working interest owners, which was created or existed prior to April 1, 1985, shall also be excluded from royalty gas for which payment shall be made pursuant to this subsection.

(C) Nothing contained in this section shall affect the obligations of working interest owners with respect to the payment of royalties, overriding royalties, production payments, or similar interests in excess of the one-eighth royalty required to be distributed under this section.

(b) All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of a drilling unit for which an integration order has been entered shall be deemed for all purposes the conduct of operations upon each separately owned tract and interest in the drilling unit by the several owners thereof. The portion of the production allocated to the owner of each tract or interest included in a drilling unit formed by an integration order shall, when produced, be considered for all purposes as if it had been produced from the tract or interest by a well drilled thereon.

History. Acts 1939, No. 105, § 15; 1963, No. 536, § 1; 1985, No. 272, § 1; A.S.A. 1947, § 53-115; Acts 1987, No. 94, §§ 1, 4; 2009, No. 1175, § 16; 2013, No. 1062, §§ 1-3; 2019, No. 315, §§ 1251-1254.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in the last sentence of (a)(3)(A)(iii)(*b*), (a)(3)(B)(ii)(*a*), and in (a)(5)(E); and inserted "rules" in the second sentence of (a)(3)(B)(i).

RESEARCH REFERENCES

Ark. L. Rev. Bruce M. Kramer, Symposium Article: Unitization: A Partial Solution to the Issues Raised by Horizontal Well Development in Shale Plays, 68 Ark. L. Rev. 295 (2015).

G. Alan Perkins, Symposium Article: Rights and Conflicts Among Surface Owners, Mineral Owners, and Lessees in Arkansas: Comparing Sticks in the Bundle, 68 Ark. L. Rev. 381 (2015).

U. Ark. Little Rock L. Rev. Thomas A. Daily & W. Christopher Barrier, Still Fugacious After All These Years: A Sequel to the Basic Primer on Arkansas Oil and Gas Law, 35 U. Ark. Little Rock L. Rev. 357 (2013).

15-72-308. Petition for unit operation — Hearing.

RESEARCH REFERENCES

Ark. L. Rev. Strudwick Marvin Rogers, Symposium Article: Fieldwide Unitization, 68 Ark. L. Rev. 425 (2015).

15-72-309. Findings to support order requiring unit operation — Issuance.

RESEARCH REFERENCES

Ark. L. Rev. Bruce M. Kramer, Symposium Article: Unitization: A Partial Solution to the Issues Raised by Horizontal Well Development in Shale Plays, 68 Ark. L. Rev. 295 (2015).

Phillip E. Norvell, Symposium Article: The History of Oil and Gas Conservation Legislation in Arkansas, 68 Ark. L. Rev. 349 (2015).

Strudwick Marvin Rogers, Symposium Article: Fieldwide Unitization, 68 Ark. L. Rev. 425 (2015).

15-72-310. Order requiring unit operation — Contents.

RESEARCH REFERENCES

Ark. L. Rev. Bruce M. Kramer, Symposium Article: Unitization: A Partial Solution to the Issues Raised by Horizontal Well Development in Shale Plays, 68 Ark. L. Rev. 295 (2015).

Phillip E. Norvell, Symposium Article: The History of Oil and Gas Conservation Legislation in Arkansas, 68 Ark. L. Rev. 349 (2015).

Strudwick Marvin Rogers, Symposium Article: Fieldwide Unitization, 68 Ark. L. Rev. 425 (2015).

15-72-315. Unitization of entire pool as one operating unit.

RESEARCH REFERENCES

Ark. L. Rev. Patrick H. Martin, Symposium Article: What the Frack? Judicial, Legislative, and Administrative Responses to a New Drilling Paradigm, 68 Ark. L. Rev. 321 (2015).

15-72-323. Notice of public hearings.

If public hearings are required, notice of public hearings before the Oil and Gas Commission as provided for in this subchapter shall be given as follows:

(1) An applicant shall give notice of the public hearing to be held upon an application by one (1) publication at least ten (10) days before the date of the public hearing, but not more than thirty (30) days before the public hearing, in a legal newspaper having a general circulation in the county, or in each county, if there are more than one (1), in which the lands embraced within the application are situated, except that, as to any public hearing pertaining to a matter of general application

throughout the State of Arkansas, the notice shall be published in a legal newspaper having statewide circulation; and

(2) The cost of publication shall be paid for by the applicant.

History. Acts 1939, No. 105, § 15; 1971, No. 351, § 1; A.S.A. 1947, § 53-115; Acts 2015, No. 906, § 3.

Amendments. The 2015 amendment substituted "If public hearings are required" for "In addition to other notice required by any rule or order of the commission" in the introductory language; in (1), substituted "An applicant" for "When an application is filed with the commission pursuant to this subchapter, the commission," substituted "before the date of the public hearing" for "prior to the date of the hearing," and substituted "before the public hearing" for "prior thereto"; and, in (2), deleted "taxed as a cost of the public hearing and shall be" after "shall be" and deleted "therein" from the end.

15-72-324. Limitation on production.

(a) Whenever the Oil and Gas Commission limits the total amount of oil or gas which may be produced in this state, the limit so fixed shall not be less than the aggregate of the allowables fixed for each separate pool in this state for the prevention of waste in accordance with the foregoing definition of waste, plus the production from unrestricted pools. It shall allocate or distribute the allowable so fixed among the separate pools. The allocation or distribution among the pools of the state shall be made on a reasonable basis, giving to each pool with small wells of settled production an allowable production which will not accelerate or encourage a general premature abandonment of the wells in the pool.

(b) Whenever the commission limits the total amount of oil or gas which may be produced in any pool in this state to an amount less than that amount which the pool could produce if no restriction were imposed, which limitation may be imposed either incidentally to, or without, a limitation of the total amount of oil or gas which may be produced in the state, the commission shall prorate or distribute the allowable production among the producers in the pool on a reasonable basis so as to prevent or minimize reasonably avoidable drainage from each developed unit which is not equalized by counter drainage and so that each producer will have the opportunity to produce or receive his or her just and equitable share, as above set forth, subject to the reasonable requirements for the prevention of waste.

(c) After the effective date of any rule or order of the commission fixing the allowable production of oil or gas, or both, for any pool, no person shall produce from any well, lease, or property more than the allowable production which is applicable, nor shall such amount be produced in a different manner than that which may be authorized.

History. Acts 1939, No. 105, § 16; A.S.A. 1947, § 53-116; Acts 2019, No. 315, § 1255.

Amendments. The 2019 amendment deleted "regulation" following "rule" in (c).

RESEARCH REFERENCES

Ark. L. Rev. Phillip E. Norvell, Symposium Article: The History of Oil and Gas Conservation Legislation in Arkansas, 68 Ark. L. Rev. 349 (2015).

Subchapter 4 — Illegal Oil and Gas

SECTION.
15-72-401. Prohibition on dealing in illegal oil and gas.

15-72-401. Prohibition on dealing in illegal oil and gas.

(a) The sale, purchase, or acquisition or the transportation, refining, processing, or handling in any other way of illegal oil, illegal gas, or illegal product is prohibited.

(b)(1) Unless and until the Oil and Gas Commission provides for certificates of clearance or tenders, or some other method, so that any person may have an opportunity to determine whether any contemplated transaction of sale, purchase, or acquisition or of transportation, refining, processing, or handling in any other way involves illegal oil, illegal gas, or illegal product, no penalty shall be imposed for the sale, purchase, or acquisition or the transportation, refining, processing, or handling in any other way of illegal oil, illegal gas, or illegal product, except under circumstances hereinafter stated.

(2) Penalties shall be imposed for the commission of each transaction prohibited in this section when the person committing the transaction knows that illegal oil, illegal gas, or illegal product is involved in the transaction or when the person could have known or determined the fact by the exercise of reasonable diligence or from facts within his or her knowledge. However, regardless of lack of actual notice or knowledge, penalties as provided in this act shall apply to any sale, purchase, or acquisition and to the transportation, refining, processing, or handling in any other way of illegal oil, illegal gas, or illegal product where administrative provision is made for identifying the character of the commodity as to its legality.

(3) It shall likewise be a violation for which penalties shall be imposed for any person to sell, purchase, or acquire or to transport, refine, process, or handle in any other way any oil, gas, or any product without complying with any rule or order of the commission relating thereto.

History. Acts 1939, No. 105, § 23; A.S.A. 1947, § 53-123; Acts 2019, No. 315, § 1256.

Amendments. The 2019 amendment deleted "regulation" following "rule" in (b)(3).

RESEARCH REFERENCES

Ark. L. Rev. Phillip E. Norvell, Symposium Article: The History of Oil and Gas Conservation Legislation in Arkansas, 68 Ark. L. Rev. 349 (2015).

Subchapter 6 — Underground Storage of Gas

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

15-72-604. Condemnation of subsurface strata or formations — Limitations.

(a) Any natural gas public utility may condemn for its use for the underground storage of natural gas any subsurface stratum or formation in any land which the Oil and Gas Commission shall have found to be suitable and in the public interest for the underground storage of natural gas and, in connection therewith, may condemn other interests in property as required to adequately examine, prepare, maintain, and operate the underground natural gas storage facilities. However, the right of condemnation of underground sands, formations, and strata granted hereby shall be limited as follows:

(1) If the commission affirmatively finds, based upon substantial evidence, that any sand, formation, or stratum is producing or is capable of producing oil, in paying quantities, through any known recovery method, then the sand, formation, or stratum shall not be subject to appropriation hereunder;

(2) No gas-bearing sand, formation, or stratum shall be subject to appropriation hereunder, unless the sand, formation, or stratum has a greater value or utility as a gas storage reservoir for the purpose of insuring an adequate supply of natural gas for any particular class or group of consumers of natural gas, or for the conservation of natural gas, than for the production of relatively small volumes of natural gas which remain therein. However, for as long as oil is produced in paying quantities in the secondary operations, no gas-bearing sand, formation, or stratum shall be condemned under the terms of this subchapter when the gas therein is being used for the secondary recovery of oil unless gas in a necessary and required amount is furnished to the

operator or operators of the secondary recovery operations for the recovery of oil at the same cost as that at which the gas was being produced at the time of condemnation by the operator of the secondary recovery project or projects;

(3) Only the area of the underground sand, formation, or stratum as may reasonably be expected to be penetrated by gas displaced or injected into the underground gas storage reservoir may be appropriated hereunder; and

(4) No rights or interests in existing underground gas reservoirs being used for the injection, storage, and withdrawal of natural gas and owned or operated by others than the condemner shall be subject to appropriation hereunder.

(b) The right of condemnation granted in this section shall be without prejudice to the rights of the owner of the lands, or of other rights or interests therein, to drill or bore through the underground stratum or formation so appropriated in a manner as shall comply with orders and rules of the commission issued for the purpose of protecting underground storage strata or formations against pollution and against the escape of natural gas therefrom and shall be without prejudice to the rights of the owner of the lands or other rights or interests therein as to all other uses.

History. Acts 1957, No. 82, § 4; A.S.A. 1947, § 53-904; Acts 2019, No. 315, § 1257.

Amendments. The 2019 amendment substituted "orders and rules of the commission" for "orders, rules, and regulations of the commission" in (b).

15-72-608. Rules.

(a) The Oil and Gas Commission shall have authority to make reasonable rules and exercise such powers as are granted to it by §§ 15-71-101 — 15-71-112, 15-72-101 — 15-72-110, 15-72-205, 15-72-212, 15-72-216, 15-72-301 — 15-72-324, and 15-72-401 — 15-72-407 as may be necessary in the administration of this subchapter.

(b) The Secretary of the Department of Finance and Administration shall have authority to make reasonable rules for the collection of the taxes and allowance of credit as provided in this subchapter.

History. Acts 1957, No. 258, § 8; A.S.A. 1947, § 53-137; Acts 2019, No. 315, § 1258; 2019, No. 910, § 3412.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in the section heading and throughout the section.

The 2019 amendment by No. 910 substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration" in (b).

Subchapter 7 — Exploration

SECTION.
15-72-704. Approval of application.
15-72-705. Certificate of discovery of commercial pool.

15-72-704. Approval of application.

The application shall be approved by the Oil and Gas Commission if it determines from the application and such investigation as it may deem proper:

(1) That the location of the proposed discovery well is not within the geographical confines of a known producing oil field; and

(2) That the application has complied with the provisions of this subchapter and all rules of the commission in respect thereto.

History. Acts 1957, No. 258, § 5; A.S.A. 1947, § 53-134; Acts 2019, No. 315, § 1259.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (2).

15-72-705. Certificate of discovery of commercial pool.

Upon receipt by the Oil and Gas Commission, within one (1) year from the date of the approval of the application, of evidence from which the commission finds that a commercial oil pool has been discovered by that person in the drilling of the discovery well and that compliance has been had with this subchapter and the rules of the commission, it shall issue to that person a certificate to that effect. This certificate shall entitle the person to the benefits of this subchapter. However, not more than one (1) certificate shall be issued for each field, nor more than one (1) pool in any field.

History. Acts 1957, No. 258, § 6; A.S.A. 1947, § 53-135; Acts 2019, No. 315, § 1260.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in the first sentence.

Subchapter 8 — Emergency Petroleum Set-Aside Act

SECTION.
15-72-802. Definitions.
15-72-804. Establishment of state emergency petroleum set-aside — General provisions.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Effi-

ciencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

15-72-802. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Assignment" means an action taken by the Arkansas Energy Office of the Division of Environmental Quality, designating that a prime supplier of petroleum products supply them to an authorized consumer, wholesale purchaser-consumer, or wholesale purchaser-reseller to facilitate relief of emergency or hardship needs, pursuant to § 15-72-804;

(2) "Broker" means a marketer of petroleum products who performs none of the basic marketing functions but normally brings buyer and seller together and receives a fee or commission for his or her services;

(3) "Consumer" means any individual, trustee, agency, partnership, association, corporation, company, municipality, political subdivision, or other legal entity which purchases petroleum products for ultimate consumption in Arkansas;

(4) "Director" means the Director of the Arkansas Energy Office;

(5) "Firm" means any association, company, corporation, estate, individual, joint venture, partnership, or sole proprietorship or any entity however organized, including charitable or educational institutions and the United States Government, including federal corporations, departments, and agencies and state and local governments;

(6) "Petroleum products" means propane, motor gasoline, blended fuels, kerosene, #2 heating oil, diesel fuel, kerosene-base jet fuel, naphtha-base jet fuel, and aviation gasoline;

(7) "Prime supplier" means the supplier which makes the first sale of any petroleum product subject to the state set-aside into the state distribution system for consumption within the state. Notwithstanding the above, "prime supplier" shall not include any firm, or any part or subsidiary of any firm which supplies, sells, transfers, or otherwise furnishes any allocated product exclusively to utilities for generation of electric energy;

(8) "Purchaser" means a wholesale purchaser or consumer, or both;

(9) "Set-aside" means, with respect to a particular prime supplier, the amount of a petroleum product which is made available from the total supply of a prime supplier, pursuant to the provisions of § 15-72-804, for utilization by the office to resolve emergencies and hardships due to shortages or other dislocations in petroleum products distribution systems; and

(10)(A) "Supplier" means any firm or any part or subsidiary of any firm, other than the United States Department of Defense, which supplies, sells, transfers, or otherwise furnishes any allocated prod-

uct to wholesale purchasers or end users, including, but not limited to, refiners, importers, resellers, brokers, jobbers, and retailers.

(B) Notwithstanding subdivision (10)(A) of this section, "supplier" shall not include any firm, or any part or subsidiary of any firm which supplies, sells, transfers, or otherwise furnishes any allocated product exclusively to utilities for generation of electric energy.

History. Acts 1983, No. 377, § 2; A.S.A. 1947, § 53-1502; Acts 2007, No. 554, §§ 1, 2; 2017, No. 271, §§ 10, 11; 2019, No. 910, §§ 3178, 3179.

Amendments. The 2017 amendment inserted "of the Arkansas Department of Environmental Quality" in (1) and (9).

The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (1) and (9).

15-72-804. Establishment of state emergency petroleum set-aside — General provisions.

(a)(1) The Arkansas Pollution Control and Ecology Commission shall promulgate rules establishing a set-aside system for petroleum products and reporting requirements for prime suppliers and brokers.

(2) The rules shall direct prime suppliers and brokers to set aside a percentage of petroleum products that are delivered to suppliers in the state for the Arkansas Energy Office of the Division of Environmental Quality to distribute to meet emergency and hardship needs.

(b) The set-aside system established pursuant to this section shall not be implemented unless:

(1) The United States Government terminates, suspends, or fails to implement a national set-aside program;

(2) The Governor finds that a set-aside system is necessary to manage an energy shortage within the state which threatens the continuation of services by emergency vehicles, essential industry, and agricultural end users; and

(3) The Governor directs the office to implement all or a portion of the set-aside program necessary to prevent and alleviate any energy hardships or shortages.

(c) Upon adoption of the rules authorized under subsection (a) of this section, the Director of the Arkansas Energy Office shall notify each prime supplier and broker of the set-aside percentage applicable to each product subject to the set-aside program.

(d)(1) The director shall establish as part of the rules adopted under subsection (a) of this section procedures governing applications for assignment and assignments by the office under the state set-aside system.

(2) The procedures shall:

(A) Include criteria for approving and disapproving applications and identifying priority users and an appeals process; and

(B) Require the director to take into account whether any assignment under the state set-aside program is likely to create an undue

economic burden or other hardship for the prime supplier or broker involved.

(e) Each prime supplier and broker shall designate a representative to act for and in behalf of the prime supplier or broker with respect to the state set-aside program. Each prime supplier and broker shall notify in writing the office of that designation.

(f) The release of the set-aside shall be as follows:

(1) On or before the fifteenth day of the month, the director may order the release of part or all of the prime supplier's or broker's set-aside volume through the prime supplier's or broker's normal distribution system in the state;

(2) From time to time, the director may designate certain geographical areas within the state as suffering from an intrastate supply imbalance. At any time during the month, the director may order some or all of the prime suppliers and brokers with purchasers within these geographical areas to release part or all of their set-aside volume through their normal distribution systems to increase the allocations of all the supplier's and broker's purchasers located within these areas; and

(3) Orders issued pursuant to this section shall be in writing and effective immediately upon presentation to the prime supplier's or broker's designated regional manager or equivalent person. The orders shall represent a call on the prime supplier's or broker's set-aside volumes for the month of issuance irrespective of the fact that delivery cannot be made until the following month.

(g) The set-aside program shall remain in effect no longer than a one-hundred-twenty-day period. The Governor may extend the program an additional thirty (30) days if necessary to manage an energy shortage. In the event that the Governor finds that the set-aside system is no longer necessary to manage an energy shortage, the Governor shall terminate the program.

History. Acts 1983, No. 377, § 3; A.S.A. 1947, § 53-1503; Acts 2007, No. 554, § 3; 2017, No. 271, § 12; 2019, No. 315, § 1261; 2019, No. 910, § 3180.

Amendments. The 2017 amendment, in (a)(1), substituted "Arkansas Pollution Control and Ecology Commission" for "Director of the Arkansas Energy Office" and "regulations" for "rules in accordance with the Arkansas Administrative Procedure Act, as amended, § 25-15-201 et seq.".

The 2019 amendment by No. 315 substituted "rules" for "regulations" in (a)(1).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a)(2).

Subchapter 9 — Interstate Compact to Conserve Oil and Gas

RESEARCH REFERENCES

Ark. L. Rev. Thomas A. Daily, Symposium Article: Rules Done Right: How Arkansas Brought Its Oil and Gas Law into a Horizontal World, 68 Ark. L. Rev. 259 (2015).

CHAPTER 73

OIL AND GAS LEASES AND LEASE INTERESTS

SUBCHAPTER.

Subchapter 2 — Leases Generally

SECTION.

15-73-201. Lease extended by production — Scope.

(a)(1) The term of an oil and gas, or oil or gas, lease extended by activities on lands in one (1) section or pooling unit, whether established by rule or by order of the Oil and Gas Commission or the lease, shall not be extended to sections or pooling units under the lease where there has been no activity.

(2) This subsection does not prevent the parties to the lease from agreeing to a continuous drilling provision in order to extend the lease term to additional lands drilled or included in another section or unit if the lessor's waiver of the right to terminate the lease to the additional lands, sections, or units where no activity has occurred before the expiration of the lease is fully set forth in the lease or another agreement in bold, enlarged, or other distinctive print.

(b) After the primary term of a lease in an uncontrolled oil field with no spacing requirements, a producing well shall contain a maximum of one (1) governmental quarter-quarter section as a production unit.

History. Acts 1983, No. 330, §§ 1-3; A.S.A. 1947, §§ 53-321 — 53-323; Acts 2011, No. 857, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Thomas A. Daily & W. Christopher Barrier, Still Fugacious After All These Years: A Sequel to the Basic Primer on Arkansas Oil and Gas Law, 35 U. Ark. Little Rock L. Rev. 357 (2013).

CASE NOTES

In General.

Pursuant to subsection (b) of this section, as a lessee commenced drilling operations on the leased premises within a year of the expiration of the primary term, subsection (a) of this section did not apply to sever the producing section from non-producing units; therefore, the lessors' request to nullify the lease was properly denied. Snowden v. JRE Invs., 2010 Ark. 276, 370 S.W.3d 215 (2010).

Cited: Southwestern Energy Prod. Co. v. Elkins, 2010 Ark. 481, 374 S.W.3d 678 (2010).

15-73-204. Notice to lessee to release forfeited lease — Damages for failure to release.

CASE NOTES

Equitable Relief.

As lessors suit the lessee, alleging it violated § 5-37-226 and this section, and attacking the validity of the lease, they could not thereafter complain that the lessee failed to fulfill its lease obligations. Therefore, the lessee's was entitled to equitable relief by being allowed to suspend its drilling obligations while the suit was pending. Snowden v. JRE Invs., 2010 Ark. 276, 370 S.W.3d 215 (2010).

15-73-207. Prudent operator standard.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev.

Thomas A. Daily & W. Christopher Barrier, Still Fugacious After All These Years: A Sequel to the Basic Primer on Arkansas Oil and Gas Law, 35 U. Ark. Little Rock L. Rev. 357 (2013).

15-73-208. Transfer of mineral lease — Notice.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev.

Thomas A. Daily & W. Christopher Barrier, Still Fugacious After All These Years: A Sequel to the Basic Primer on Arkansas Oil and Gas Law, 35 U. Ark. Little Rock L. Rev. 357 (2013).

Subchapter 4 — Partition of Oil and Gas Lease Interests

SECTION.

15-73-403. Service of summons.

Summons shall be issued and served as in other cases in circuit court and if any defendant shall be a nonresident of the state, or his or her whereabouts unknown to the plaintiff, such person may be constructively summoned, as provided by Rule 4 of the Arkansas Rules of Civil Procedure.

History. Acts 1935, No. 15, § 3; Pope's Dig., § 10551; A.S.A. 1947, § 53-403; Acts 2013, No. 1148, § 5.

15-73-408. Necessary parties — Effect of sale or lease.

RESEARCH REFERENCES

ALR. Homestead Right of Cotenant as Affecting Partition. 83 A.L.R.6th 605.

CHAPTER 74

MEASUREMENT, INSPECTION, AND SALE OF OIL AND GAS

SUBCHAPTER.
2. Measurement Generally.
4. Tests and Inspections.
6. Proceeds of Sale Generally.

Subchapter 2 — Measurement Generally

SECTION.
15-74-201. Accurate measurement of crude petroleum oil.

15-74-201. Accurate measurement of crude petroleum oil.

(a) All crude petroleum oil produced in this state shall be measured in gauge-tanks. The pipelines through which the crude petroleum oil is conveyed from oil wells to the gauge-tanks shall be placed on the surface of the ground and no bypasses shall extend from the pipelines between the oil wells and gauge-tanks. However, this section shall not apply to oil wells in operation prior to the date of the passage of this act.

(b) The Oil and Gas Commission shall have supervision and control of the measurement of crude petroleum oil produced in this state as set forth in subsection (a) of this section. The commission shall make a daily record of the measurement of the crude petroleum oil, and it is authorized and empowered to make reasonable and necessary rules for the enforcement of the purposes of this section.

History. Acts 1939, No. 205, §§ 1, 2; A.S.A. 1947, §§ 53-501, 53-502; Acts 2019, No. 315, § 1262.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in the second sentence of (b).

Subchapter 4 — Tests and Inspections

SECTION.
15-74-401. Penalty.
15-74-402. Rules.
15-74-408. Inspection of dealer records.
15-74-409. Oil or gasoline testing prior to sale.
15-74-410. Records of inspections — Disposition of funds.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Effi-

ciencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

15-74-401. Penalty.

(a) A dealer shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than fifty dollars ($50.00) nor more than five hundred dollars ($500), if that dealer:

(1) Offers for sale any of the oils or fluids mentioned in this subchapter which:

(A) Have not been tested; or

(B) Having been tested, fail to comply with the specifications set out in this subchapter; or

(2) Fails to comply with all the requirements of any section of this subchapter or rules promulgated by the Secretary of the Department of Finance and Administration under authority of this subchapter.

(b) However, the secretary, or any of his or her deputies or inspectors, shall have the power to compromise the penalty herein fixed by imposing the penalty as the merits of the case demand.

History. Acts 1933, No. 134, § 12; Pope's Dig., § 10459; A.S.A. 1947, § 53-612; Acts 2019, No. 315, § 1263; 2019, No. 910, §§ 3413, 3414.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (a)(2).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration" in (a)(2); and substituted "secretary" for "director" in (b).

15-74-402. Rules.

The Secretary of the Department of Finance and Administration shall have authority to promulgate such rules in regard to the enforcement of this subchapter as shall not be inconsistent with the provisions of the subchapter which in his or her judgment will best serve to carry out the purpose thereof.

History. Acts 1933, No. 134, § 11; Pope's Dig., § 10458; A.S.A. 1947, § 53-611; Acts 2019, No. 315, § 1264; 2019, No. 910, § 3415.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in the section heading and in the text.

The 2019 amendment by No. 910 substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration".

15-74-408. Inspection of dealer records.

The person, firm, or corporation who receives motor vehicle fuel must keep in his or her possession and file in an orderly manner statements

showing distillation tests, bills of lading, or invoices, as the case may be, covering each quantity received, and those items are to be subject to inspection by the Secretary of the Department of Finance and Administration or his or her authorized agents.

History. Acts 1933, No. 134, § 7; Pope's Dig., § 10454; A.S.A. 1947, § 53-607; Acts 2019, No. 910, § 3416.

Amendments. The 2019 amendment substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration".

15-74-409. Oil or gasoline testing prior to sale.

(a) Whenever any person, firm, or corporation shall receive any of the oils or gasoline mentioned in this subchapter that has not been tested under the laws of this state, it shall be his or her or its duty to:

(1) Cause to be tested, or test, the oils or gasoline as provided in this subchapter before the oils or gasoline are offered for sale; or

(2) Pay the same fee as is provided in this subchapter.

(b) In order to comply with the requirements of this section, the inspectors or deputies, when called upon, as soon as practicable, shall test or cause to be tested the petroleum oils mentioned in the subchapter.

(c) When any person, firm, or corporation shall receive within this state any of the petroleum oils mentioned in this subchapter for the different purposes mentioned in this subchapter, he or she shall at once notify the Secretary of the Department of Finance and Administration, or one (1) of his or her deputies or inspectors, of the quantity of the oils received and request the inspection of the oils. If for any reason the deputies or inspectors are not able to promptly test the petroleum oils, the person, firm, or corporation, or any authorized agent thereof, may subject the products of petroleum to the test prescribed by the provisions of this subchapter, and on furnishing the secretary, or any deputy or inspector, an affidavit that the oils have been subjected to and have met the requirements of the test prescribed by this subchapter, he or she shall be entitled to receive from the secretary, or deputy or inspector, a certificate showing that the test has been made. The person, firm, or corporation, or any duly authorized agent thereof, may then sell or offer for sale the oils.

History. Acts 1933, No. 134, § 8; Pope's Dig., § 10455; A.S.A. 1947, § 53-608; Acts 2019, No. 910, § 3417.

Amendments. The 2019 amendment, in (c), substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration" in the first sentence and "secretary" for "director" twice in the second sentence.

15-74-410. Records of inspections — Disposition of funds.

(a) The Secretary of the Department of Finance and Administration, or his or her deputies or inspectors, whose duty it is to enforce this subchapter, shall keep a correct record of all oils and fluids inspected by them in a book provided for by the state for that purpose. They shall

have the power to make any necessary investigation to determine whether or not any oils have been inspected before being offered for sale.

(b) The secretary, his or her deputies, or his or her inspectors, shall have the right to administer oaths and inspect any and all records having reference to the receiving, forwarding, transportation, or sale of any oils or fluids.

(c) All records kept by the secretary, or his or her deputies or inspectors, pertaining to the inspection of oils and fluids mentioned in this subchapter shall be open to the inspection of any interested party.

History. Acts 1933, No. 134, § 9; Pope's Dig., § 10456; Acts 1965, No. 493, § 6; A.S.A. 1947, § 53-609; Acts 2019, No. 910, § 3418.

Amendments. The 2019 amendment substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration" in (a); and substituted "secretary" for "director" in (b) and (c).

Subchapter 6 — Proceeds of Sale Generally

SECTION.

15-74-601. Time limits governing oil and gas payments — Definition.

(a) The proceeds derived from the sale of oil or gas production from any oil or gas well shall be paid to persons legally entitled thereto, commencing no later than six (6) months after the date of first sale and thereafter no later than sixty (60) days after the end of the calendar month within which subsequent production is sold or as provided for under subdivision (b)(2) of this section.

(b)(1) The payment of proceeds under subsection (a) of this section is to be made to persons entitled thereto by the first purchasers of the production.

(2) The payment may be made annually for the aggregate of up to twelve (12) months of accumulation of proceeds if the aggregate amount owed is at least ten dollars ($10.00), but less than one hundred fifty dollars ($150), provided, upon written request by the royalty owner, the payment shall be made when the aggregate amount exceeds fifty dollars ($50.00). Accumulated amounts of less than ten dollars ($10.00) may be held but shall be paid when production ceases or by the payor of the payment upon relinquishing responsibility.

(c) As used in this subchapter, "first purchaser" means the first commercial purchaser after completion of the well and shall not include purchasers of oil or gas during initial testing prior to completion.

(d) Any delay in determining the persons legally entitled to an interest in the proceeds from production caused by unmarketable title to the interest shall not affect payments to persons whose title is marketable.

(e) When payment has not been made within the time limits specified in this subchapter, the first purchaser shall pay interest to those legally entitled to the withheld proceeds commencing on the payment due date at the rate of twelve percent (12%) per annum on the nonpaid amounts unless a different rate of interest is specified in a written agreement between the payor and the payee.

(f) The first purchaser shall be exempt from the provisions of this subchapter, and the owner of the right to drill and to produce under an oil and gas lease or force pooling order shall be substituted for the first purchaser therein when the owner and purchaser have entered into arrangements in which the proceeds are paid by the purchaser to the owner, who assumes the responsibility of paying the proceeds to persons legally entitled thereto.

(g) Moneys paid by the payor under this section may be paid by either check or any form of electronic funds transferred to the persons legally entitled to the moneys under § 15-72-305.

History. Acts 1981, No. 269, § 1; 1983, No. 448, § 1; A.S.A. 1947, § 53-525; Acts 2003, No. 276, § 1; 2013, No. 1062, §§ 4, 5.

15-74-602. Fraudulently withholding payments.

CASE NOTES

Construction with Other Law.

In an action for breach of an oil and gas lease, plaintiff lessor was not entitled to the penalty provided by subsection (a) of this section because, assuming that the lessor had furnished the lessee with the requisite notice pursuant to § 15-74-603, the lessor still failed to plead any facts that would support a finding that the lessee willfully withheld payments without just cause or in bad faith. Walls v. Petrohawk Props., LP, 812 F.3d 621 (8th Cir. 2015).

15-74-603. Action for nonpayment of proceeds.

CASE NOTES

Penalty.

In an action for breach of an oil and gas lease, plaintiff lessor was not entitled to the penalty provided by § 15-74-602 because, assuming that the lessor had furnished the lessee with the requisite notice, the lessor still failed to plead any facts that would support a finding that the lessee willfully withheld payments without just cause or in bad faith. Walls v. Petrohawk Props., LP, 812 F.3d 621 (8th Cir. 2015).

CHAPTER 75

LIQUEFIED PETROLEUM GASES

SUBCHAPTER.

1. General Provisions.
2. Liquefied Petroleum Gas Board.
3. Permits and Certificates of Competency.
4. Containers.

Subchapter 1 — General Provisions

SECTION.
15-75-103. Penalty.
15-75-110. Reports.

15-75-103. Penalty.

Any person violating any of the provisions of this act or any rule adopted pursuant thereto shall be guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than twenty-five dollars ($25.00) nor more than one thousand dollars ($1,000) and, in addition, may be imprisoned for not more than one (1) year, or both.

History. Acts 1965, No. 31, § 30; A.S.A. 1947, § 53-729; Acts 2019, No. 315, § 1265.

Amendments. The 2019 amendment substituted "rule" for "regulation".

15-75-110. Reports.

Reports of the sales, shipment, and installation of containers and systems shall be made by manufacturers, jobbers, and dealers on such forms and in such manner as may be provided by rule of the Liquefied Petroleum Gas Board.

History. Acts 1965, No. 31, § 19; A.S.A. 1947, § 53-718; Acts 2019, No. 315, § 1266.

Amendments. The 2019 amendment substituted "rule" for "regulation".

Subchapter 2 — Liquefied Petroleum Gas Board

SECTION.
15-75-202. Meetings.
15-75-206. Personnel — Counsel.
15-75-207. Rules.
15-75-208. Standards for containers, systems, etc.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

15-75-202. Meetings.

(a) The Liquefied Petroleum Gas Board shall adopt and may modify rules for the conduct of its business and shall keep a record of its transactions.

(b) Meetings shall be at the call of the chair or of the vice chair if he or she is for any reason the acting chair, either at his or her own instance or upon the written request of at least four (4) members.

(c) A quorum shall consist of not fewer than four (4) members present at any regular or special meeting, and a majority affirmative vote of that number shall be necessary for the disposition of any business.

(d) No meeting shall be for a longer period of time than is absolutely necessary to transact the business of the board.

(e) The board may meet one (1) time each calendar quarter, but no more than one (1) meeting shall be held during a sixty-day period for which a member is to receive compensation or reimbursement of expenses incurred.

History. Acts 1965, No. 31, §§ 8, 9; A.S.A. 1947, §§ 53-707, 53-708; Acts 1999, No. 1577, § 2; 2013, No. 327, § 1.

15-75-206. Personnel — Counsel.

(a)(1) The Liquefied Petroleum Gas Board shall appoint a Director of the Liquefied Petroleum Gas Board to serve with the approval and at the pleasure of the Governor.

(2) The director shall report to the Secretary of the Department of Energy and Environment.

(b) The director shall have the authority, in consultation with the secretary, to:

(1) Employ assistants, inspectors, and other personnel; and

(2) Retain counsel as may be necessary to aid it properly in the administration of this subchapter, with the approval of the board.

(c)(1)(A) The director shall have the power and duty to receive applications and to review and approve applications for all classes of permits after applications and supporting papers have been on file for at least thirty (30) days.

(B) The director may issue class one permits once all conditions or prerequisites have been met as set out in § 15-75-307 and the application has been approved by the board.

(C) The director may issue all class two through class ten permits after all conditions and prerequisites have been met as set out in §§ 15-75-308 — 15-75-317.

(2) The director may refuse to approve applications for permits for safety reasons.

(d) The director's decisions on the approval of the applications for class one permits shall be reviewed by the board at its next regularly scheduled meeting.

History. Acts 1965, No. 31, § 11; 1983, No. 691, § 9; A.S.A. 1947, §§ 53-701.1, 53-710; Acts 1999, No. 1577, § 3; 2001, No. 440, § 2; 2007, No. 733, § 3; 2019, No. 910, § 3181.

Amendments. The 2019 amendment redesignated (a) as (a)(1); added (a)(2); and inserted "in consultation with the secretary" in the introductory language of (b).

15-75-207. Rules.

(a) The Liquefied Petroleum Gas Board is empowered to make reasonable rules to carry out the provisions of this subchapter. Such rules shall have the force and effect of law.

(b) In addition to the functions, powers, and duties conferred and imposed upon the board by this subchapter, and the regulation of its own procedure and carrying out its functions, powers, and duties, it shall have the authority from time to time to make, amend, and enforce all reasonable rules not inconsistent with law, which will aid in the performance of any of the functions, powers, or duties conferred or imposed upon it by law.

(c) All permanent rules promulgated for the regulation of liquefied petroleum gases as published in the state code governing liquefied petroleum gas containers and equipment dated May 1, 1964, shall remain in full force and effect until changed, altered, amended, or abolished by the board.

History. Acts 1965, No. 31, §§ 12, 28; A.S.A. 1947, §§ 53-711, 53-727; Acts 2019, No. 315, § 1267.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in the section heading and throughout the section.

15-75-208. Standards for containers, systems, etc.

The Liquefied Petroleum Gas Board shall provide additional standards or specifications for containers, systems, appliances, and appurtenances, as may be reasonably necessary for the public safety. The standards or specifications are to be set forth in the rules of the state code governing liquefied petroleum gas containers and equipment.

History. Acts 1965, No. 31, § 23; A.S.A. 1947, § 53-722; Acts 2019, No. 315, § 1268.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in the second sentence.

Subchapter 3 — Permits and Certificates of Competency

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

15-75-301. Definitions.

As used in this subchapter:

(1) "Certificate of competency" means approval by the Liquefied Petroleum Gas Board of the employees to be placed in charge of operations, service, installation, and transportation by permit holders; and

(2) [Repealed.]

(3) "Permits" means the written authorization granted by the Director of the Liquefied Petroleum Gas Board with the board's approval to persons to engage in the liquefied petroleum gas business.

History. Acts 1965, No. 31, § 24; A.S.A. 1947, § 53-723; Acts 1999, No. 1577, § 4; 2019, No. 910, § 3182.

Amendments. The 2019 amendment repealed (2).

15-75-304. Certificates of competency — Qualifications.

(a) To be entitled to a certificate of competency, a person shall:

(1) Have satisfactory experience in the liquefied petroleum gas business or give proof of previous on-the-job training in the liquefied petroleum gas business satisfactory to the Liquefied Petroleum Gas Board as prescribed by its rules;

(2) Have not less than thirty (30) days' experience in the liquefied petroleum gas installation or transportation business; and

(3) Pass a written or oral examination as prescribed by the board.

(b) A new class one employee shall attend a forty-hour basic course in liquefied petroleum gas, as prescribed by the board, within the first year of his or her employment, or his or her certification certificate will be suspended until the course has been completed.

(c) A class one employee who changes from one class one employer to another class one employer who has not previously had the forty-hour basic training course, as prescribed by the board, shall do so within one (1) year of the transfer date of employment or his or her certification certificate will be suspended until the course has been completed.

(d)(1) The board may accept as its own a reciprocal state's transportation and delivery examination for a transport driver only if it contains substantially equivalent requirements as those required by the board.

(2) Substantial uniformity shall be demonstrated by a letter from the issuing authority of the state or a copy of a current and valid card issued by the reciprocal state.

(3) All applicable fees shall be paid to the board before the issuance of the certification card.

History. Acts 1965, No. 31, § 24; A.S.A. 1947, § 53-723; Acts 1995, No. 477, § 2; 1999, No. 224, § 1; 2007, No. 733, § 4; 2009, No. 481, § 10; 2019, No. 315, § 1269.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (a)(1).

15-75-305. Applicants for permits.

(a)(1)(A)(i) Any person desiring to engage in the liquefied petroleum gas business in this state must file a formal application and supporting papers, together with a filing fee of fifty dollars ($50.00), with the Director of the Liquefied Petroleum Gas Board at least thirty (30) days prior to the approval of the application by the director.

(ii) Should the applicant be a corporation or partnership, copies of the articles of incorporation or partnership agreement, if any, shall accompany the application together with a certificate from the Revenue Division of the Department of Finance and Administration evidencing that all taxes due have been paid or otherwise negating state tax liability.

(iii) Application forms will be furnished by the director at any time upon request.

(B)(i) In determining whether to grant permits or certificates, the director shall be given a reasonable time in which to investigate the applicant.

(ii) If the permit or certificate is denied, the applicant shall be notified by registered mail.

(iii) The Liquefied Petroleum Gas Board shall review the director's decision on the approval of class one permit applications at its next regularly scheduled meeting.

(2)(A)(i) The director shall have the power and duty to receive, review, and approve applications for all classes of permits after applications and supporting papers have been filed with the director for at least thirty (30) days. The director may refuse to approve applications for permits for safety reasons.

(ii) The director may issue class one permits once all conditions and prerequisites have been met as set out in § 15-75-307 and the application has been approved by the board.

(iii) The director may issue class two through class ten permits after application and supporting papers have been on file for at least thirty (30) days and all conditions and prerequisites for those permits have been met as set out in §§ 15-75-308 — 15-75-317.

(B) The board, at its regularly scheduled meetings, shall review the director's decisions on the approval of applications for class one permits. The board may refuse to issue permits for safety reasons.

(3) Any applicant aggrieved by a denial by the director or any person or group of persons who are aggrieved by safety concerns because of the issuance of the permits by the director after the board's approval may appeal the decision within thirty (30) days thereof, to the board by filing a notice of appeal with the board. The notice of appeal of the board's or director's decision shall be on a written form provided by the board. The notice of appeal shall suspend the action of the director in denying an application or in issuing or denying a permit until the next regular meeting of the board or until a special hearing by the board can be held.

(4) A meeting or hearing shall be held within at least thirty (30) days after the date of the filing of the notice of appeal unless the person appealing shall consent to a later hearing.

(5) Within five (5) days after the hearing is concluded, the board shall render its written decision on the appeal.

(6) The board is authorized on its own motion to review any action of the director in denying an application or in issuing or refusing to issue a permit and, upon review, to set aside any action of the director in any of these respects insofar as it pertains to safety issues.

(b) Applicants for class one permits, as defined in § 15-75-307, shall be present at the board meeting at which the review of the director's action on the application is to be considered.

(c) Before any application may be considered by the director and reviewed by the board, the applicant must have on file in the office of the director a certificate of intended insurance evidencing the kinds and amounts as required by this subchapter for the class of permit requested. After approval of the application and before the permit may be issued, a certificate of required insurance must be furnished bearing the clause, "The insurance company will notify the Director, Liquefied Petroleum Gas Board, thirty (30) days prior to cancellation of the insurance referred to herein." Binders by insurance agents are not acceptable for the purposes of this subchapter.

(d) All applicants must agree to provide adequate equipment and products which are satisfactory to the board.

(e) All persons in charge of operations and servicemen, installation men, and truck drivers must have a certificate of competency from the board. Each certificate of competency shall be renewed annually.

(f)(1) Applicants must have satisfactory experience in the liquefied petroleum gas business or have employed a recognized operator of the business with experience and competency. In order that the director or the board may be assured as to competency insofar as safety is concerned, applicants for permits to engage in the liquefied petroleum gas business generally shall qualify for new certificates of competency. One (1) or more employees who are to be engaged in the delivery and transportation of liquefied petroleum gas, and one (1) or more separate employees who are to be engaged in the installation of liquefied petroleum gas containers and systems, as well as a general safety supervisor, shall have a general knowledge of the characteristics of liquefied petroleum gases, as well as of their proper handling and

utilization, along with a thorough knowledge and understanding of the National Fire Protection Association Pamphlet No. 58 and the State Liquefied Petroleum Gas Code covering the storage and handling of liquefied petroleum gases, as established by a current written or oral examination prepared and conducted by the director with the approval of the board.

(2) Applicants must agree to furnish whatever information the director or the board may require as to their ability to engage in the liquefied petroleum gas business and must also furnish whatever references the director or the board may require.

(g)(1) In order that the public or the user of liquefied petroleum gases may be assured of competent and efficient service to any container, system, or appurtenance, each dealer who has been issued a current permit or any applicant therefor in addition to competent gas delivery and transportation personnel, shall provide separate competent personnel for the installation and servicing of containers, systems, and appurtenances.

(2) In determining whether or not to grant a permit, the director and the board shall determine whether or not an applicant can provide safe and efficient service to the public or the users in the area in which liquefied petroleum gas operations are to be conducted.

(h) In addition to the foregoing requirements, applicants must also meet the additional requirements listed under the specific class of permit desired.

(i) All foreign corporations doing business in this state in any phase of the liquefied petroleum gas business must furnish evidence of their qualifications to do business in the state as a foreign corporation.

(j) In addition to the foregoing, the board shall have the power to make reasonable application requirements by rule and shall adopt rules as it shall deem necessary to govern the procedures in any hearing to review the issuance or denial of permits.

(k)(1) Applicants for a class one permit must attend a forty-hour basic course in liquefied petroleum gas, as prescribed by the board, prior to the board meeting at which the review of the final action on their application may be heard.

(2) All owners, managers or officials, and employees connected to or listed on the class one application must attend the basic training course prior to the board meeting at which the review of their application may be heard.

History. Acts 1965, No. 31, § 24; A.S.A. 1947, § 53-723; Acts 1991, No. 300, § 2; 1995, No. 477, § 3; 1999, No. 1577, § 6; 2001, No. 440, §§ 3-6; 2007, No. 733, § 5; 2019, No. 315, § 1270.

Amendments. The 2019 amendment, in (j), substituted "rule" for "rules and regulations" and deleted "and regulations" following "rules".

15-75-319. Reinstatement or transfer of permits — Automatic revocation upon suspension of business.

(a) Each permit authorized by the Liquefied Petroleum Gas Board shall be issued in the name of the person for whom approval was granted.

(b) No permit shall be transferable to any other person without prior approval by the board.

(c) The permits of all holders who shall cease doing business as authorized by their permits for a period of twenty (20) days shall be automatically revoked and may be reinstated only by action of the board.

(d) A transfer of an existing permit or a reinstatement of an automatic revocation of an existing permit pursuant to this subchapter may be made only upon compliance with this subchapter and rules pertaining to new applications, and the proposed transfers or reinstatements shall meet all requirements for new applications.

History. Acts 1965, No. 31, § 26; A.S.A. 1947, § 53-725; Acts 2019, No. 315, § 1271.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (d).

15-75-321. Suspension of certificate of competency — Revocation of permit or certificate.

(a) The Director of the Liquefied Petroleum Gas Board or any inspector of the Liquefied Petroleum Gas Board is authorized to temporarily suspend the certificate of competency of any person subject to this subchapter if it shall be determined that the person, while engaged in liquefied petroleum gas operations, is so engaged in a reckless, careless, or unsafe manner or in an intoxicated state which endangers human life, provided that those persons shall have an opportunity to contest the suspension under the provisions of this subchapter as hereinafter provided for.

(b) The board, upon sufficient proof, may revoke, suspend, reprimand, place on probation, refuse to renew, or refuse to issue the permit or certificate of competency of any holder or person for cause or willful violation of any of the laws or rules as promulgated by the board after due notice, provided that all persons shall be entitled to a hearing before the board to show cause why the permit or certificate of competency should not be revoked. Any person whose certificate of competency has been temporarily suspended by the director or an inspector of the board shall be entitled to a hearing before the board at its next meeting to show cause why the certificate of competency should not be permanently revoked. No person whose permit or certificate of competency is suspended temporarily or permanently revoked hereunder shall engage in any phase of the liquefied petroleum gas business until authorized to do so by order of the board.

(c) The board is empowered to administer oaths and affirmations, to take depositions, to certify to official actions, and to issue subpoenas to

compel the attendance of witnesses and the production of books, papers, and records deemed necessary as evidence in connection with any matter properly before it. In case of contumacy by a witness or a party or a refusal by any person to obey a subpoena, any court within the jurisdiction in which the witness, party, or other person is found or resides or transacts business, upon application by the board, shall issue to the witness, party, or other person as aforesaid an order requiring the person to appear before the board and to produce evidence if so ordered or to give testimony touching on the matter involved. Any failure to obey the order of the court may be punished by the court as a contempt thereof. A person who without just cause fails or refuses to attend and testify or answer any lawful inquiry or to produce books, papers, or records in obedience to a subpoena of the board shall be punished by a fine of not less than two hundred dollars ($200) or by imprisonment of not longer than sixty (60) days, or by both. Each day the violation continues is a separate offense and may be punished as such. If a holder of a permit or a certificate of competency violates any provision of this subsection, the board may immediately revoke his or her permit or certificate of competency, and the person shall not thereafter engage in any phase of the liquefied petroleum gas business until he or she has complied with reasonable orders the board may make in connection therewith.

(d) All action taken by the board pursuant to this section is subject to judicial review by the Pulaski County Circuit Court as provided for in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(e) An applicant for or holder of a permit may not engage in any phase of the liquefied petroleum gas business covered by the permit during any period of refusal to grant or of revocation by the board, including the period of the pendency of any appeal from action by the board.

(f) All suppliers of liquefied petroleum gases, containers, and equipment, when notified by the board of a revoked permit, may not legally sell liquefied petroleum gas, containers, or equipment to any person whose permit shall have been revoked.

(g) All fines, penalties, forfeitures, and moneys of all description received by the board shall be deposited into the State Treasury to the credit of the Liquefied Petroleum Gas Fund.

History. Acts 1965, No. 31, § 27; A.S.A. 1947, § 53-726; Acts 1995, No. 477, §§ 9, 10; 2019, No. 315, § 1272.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in the first sentence of (b).

15-75-322. Shortage emergencies.

(a) The Governor of the State of Arkansas may join with the governor of any other state in declaring a liquefied petroleum gas shortage emergency.

(b) When the declaration is issued, liquefied petroleum gas trucks and operators meeting all certification, permit, and licensing require-

ments of the United States Government and their home state shall be permitted to transport liquefied petroleum gas in and through Arkansas without obtaining any license, permit, or certification by an agency of the State of Arkansas.

(c) The waiver of Arkansas licensing, permitting, and certification laws and rules regarding liquefied petroleum gas trucks and operators thereof shall be valid only during the time of the emergency.

History. Acts 1991, No. 6, § 1; 2019, No. 315, § 1273.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (c).

15-75-323. Civil penalty.

(a) In addition to any other penalty provided in this chapter, any person who violates any provision of this chapter, or any rule pertaining thereto, shall pay to the Liquefied Petroleum Gas Board a civil penalty of not more than five thousand dollars ($5,000) for each offense.

(b)(1) If a person against whom a civil penalty has been imposed by the board fails to pay the penalty, the board may file an action in the Pulaski County Circuit Court to collect the civil penalty.

(2) If the board prevails in the action, the defendant shall be directed to pay, in addition to the civil penalty, reasonable attorney's fees and costs incurred by the board in prosecuting the action.

History. Acts 1995, No. 477, § 11; 2019, No. 315, § 1274.

Amendments. The 2019 amendment deleted "or regulation" following "rule" in (a).

Subchapter 4 — Containers

SECTION.

15-75-404. Inspection.

(a) Each container used for the storage or transportation of liquefied petroleum gases for distribution or resale shall be inspected at least once annually.

(b) Each container which is to be used or connected as a part of a plant or to a system for the utilization of liquefied petroleum gases shall have a state registration tag of approval attached before installation and shall be inspected thereafter at such times and in such manner as may be determined under the rules of the Liquefied Petroleum Gas Board.

(c) No bulk or commercial storage container shall be installed or moved and reinstalled at any location prior to approval by the board.

(d) Any inspector of the board who, after inspection of any container or system, shall find it unsafe, shall forbid its further use.

History. Acts 1965, No. 31, § 18; 1981, No. 199, § 1; 1985, No. 909, § 2; A.S.A. 1947, § 53-717; Acts 2019, No. 315, § 1275.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (b).

15-75-407. Retail sellers to furnish account statements to certain customers.

(a) Each person, corporation, partnership, association, or other entity engaging in the business of selling liquefied petroleum gas at retail in the state shall furnish within the first twenty (20) days of each calendar month to each retail customer in the state having a credit balance of twenty dollars ($20.00) or more a statement of the customer's account showing that credit balance.

(b) The Liquefied Petroleum Gas Board shall see that every propane dealer doing business in the State of Arkansas receives a copy of this section and shall monitor compliance with this section.

(c) The failure of any person, corporation, partnership, association, or other entity to comply with the provisions of this section or the rules of the board adopted pursuant to the provisions of this section shall constitute grounds for the revocation or suspension of the license or permit of each person or entity to engage in the business of selling liquefied petroleum gas at retail in this state.

History. Acts 1985, No. 247, §§ 1-3; A.S.A. 1947, §§ 53-735 — 53-737; Acts 2019, No. 315, § 1276.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (c).

CHAPTER 76

BRINE

SUBCHAPTER.

3. Brine Production.

Subchapter 3 — Brine Production

SECTION.

Effective Dates. Acts 2015, No. 89, § 14: Feb. 13, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the brine production industry faces imminent financial constraints; that the creation of brine expansion units will mitigate the expected impact of those constraints; and that this act is immediately necessary because production of brine will suffer each day that brine expansion units are not available. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

15-76-302. Definitions.

As used in this subchapter:

(1) "Aquifer" means any subsurface geological interval in which brine may lie or from which brine is being produced and saved or sold for the primary purpose of extracting chemical substances contained in the subsurface geological interval;

(2)(A) "Brine" means salt water, whether contained in or removed from an aquifer, and all other chemical substances produced with or extracted from such salt water except for commercial production of oil and gas.

(B) "Brine" does not include brine produced as an incident to the production of oil and gas, unless the brine is saved or sold for the purpose of extracting the chemical substances in the brine;

(3) "Brine expansion unit" means each separate composite area of land so designated by order of the Oil and Gas Commission as an expansion area adjacent to an existing brine production unit for the production of brine or the injection of effluent;

(4) "Brine production unit" means each separate composite area of land so designated by order of the commission for the production of brine and the injection of effluent;

(5) "Commission" means the Oil and Gas Commission;

(6) "Director" means the Director of Production and Conservation;

(7) "Effluent" means the liquid remaining after extraction of any chemical substances from brine and any other material or chemicals in solution therein or associated therewith;

(8) "Injection well" means a well utilized for injecting effluent or other substances into an aquifer for disposal purposes;

(9) "Just and equitable share of brine" of an owner in:

(A) A brine production unit or brine expansion unit containing one (1) or more production wells means that part of the actual production of brine from the brine production unit or brine expansion unit that is in the same proportion to the total production of brine from the brine production unit or brine expansion unit as the interest of the owner in the brine of the brine production unit or brine expansion unit expressed in surface acres is to the total surface acreage of the brine production unit or brine expansion unit; and

(B) A brine expansion unit containing only one (1) or more injection wells means that part of the average production of brine from all production wells in the adjacent brine production unit that is in the same proportion to the average production as the interest of the owner in the brine of the brine expansion unit expressed in surface acres is to the total surface acreage of the brine expansion unit;

(10) "Owner" means the person who has the right to drill into and to produce brine from an aquifer and to appropriate the production either for himself or herself or for himself or herself and another or others;

(11) "Person" means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind;

(12) "Producer" means the owner of an existing well or wells capable of producing brine, as well as any owner or owners who are capable and willing to incur the capital investment required for purposes of drilling, completing, and equipping the proposed well or wells within any existing or proposed brine production unit;

(13) "Unit" means a brine production unit or a brine expansion unit; and

(14) "Waste" in addition to its ordinary meaning shall include:

(A) Inefficient, excessive, or improper use or dissipation of energy or alteration of fluid levels contained within an aquifer; and the location, spacing, drilling, or operating of any producing or injection well or wells in a manner which results in a significant reduction in the economic recoverability of brine from an aquifer or the chemical substances contained therein;

(B) Abuse of the correlative rights and opportunities of each owner of brine in an aquifer due to nonuniform and disproportionate withdrawals causing undue drainage between units;

(C) Injecting effluent or other wastes in a manner as to cause unnecessary water channeling or undue forced migration of brine between units;

(D) The undue drowning with effluent of any stratum or part of a stratum containing commercial quantities of oil or gas; or

(E) The employment of any practice with respect to brine in an aquifer which results or tends to result in a significant reduction in the economic recoverability of the brine or the chemical substances contained in the brine.

History. Acts 1979, No. 937, § 2; A.S.A. 1947, § 53-1302; Acts 2015, No. 89, § 1; 2017, No. 374, § 43.

Amendments. The 2015 amendment deleted "unless the context otherwise requires" at the end of the introductory language; redesignated (2) as (2)(A) and (B) and rewrote the language in (2)(B); inserted (3); redesignated former (3)-(11) as (4)-(12); deleted "or 'unit'" preceding "means" in (4); in (9), inserted designation (9)(A) and substituted "A brine production unit or brine expansion unit containing one (1) or more production wells" for "a developed unit"; added (9)(B); inserted (13); and redesignated former (12) as (14).

The 2017 amendment, in (9)(A), substituted the last four occurrences of "brine production unit or brine expansion unit" for "unit", substituted "means" for "is" following "production wells", and substituted "that" for "which" preceding "is in the same proportion"; and substituted "means" for "is" following "injection wells" in (9)(B).

15-76-303. Penalties.

(a) Any person shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of competent jurisdiction, to a fine of not more than five hundred dollars ($500) or imprisonment for a term of not more than six (6) months, or to both fine and imprisonment, who, for the purpose of evading this subchapter or of evading any rule or order made thereunder, shall:

(1) Intentionally make or cause to be made any false entry or statement of fact in any report required to be made by this subchapter or by any rule or order made hereunder;

(2) Make or cause to be made any false entry in any account, record, or memorandum kept by any person in connection with the provisions of this subchapter or of any rule or order made hereunder;

(3) Omit to make, or cause to be omitted, full, true, and correct entries in those accounts, records, or memoranda, of all facts and transactions pertaining to the interest or activities in the brine industry of that person as may be required by the Oil and Gas Commission under authority given in this subchapter or by any rule or order made hereunder; or

(4) Remove out of the jurisdiction of the state, or who shall mutilate, alter, or by any other means falsify, any book, record, or other paper made under this subchapter.

(b) Any person who knowingly and willfully violates any provision of this subchapter or of any rule or order of the commission made hereunder shall, in the event a penalty for the violation is not otherwise provided in this subchapter, be subject to a penalty not to exceed one thousand dollars ($1,000) a day for each and every day of the violation. For each and every act of violation, the penalty shall be recovered in a suit in the circuit court of the county where the defendant resides, or in the county of the residence of any defendant if there is more than one (1) defendant, or in the circuit court of the county where the violation took place. The place of suit shall be selected by the commission, and the suit, by direction of the commission, shall be instituted and conducted in the name of the commission by the attorney for the commission or by the Attorney General or under his or her direction by the prosecuting attorney of the county where the suit is instituted.

(c) Any person knowingly and willfully aiding or abetting any other person in the violation of any provision of this subchapter or any rule or order made hereunder shall be subject to the same penalties as are prescribed herein for the violation by the other person.

History. Acts 1979, No. 937, § 19; A.S.A. 1947, § 53-1319; Acts 2019, No. 315, § 1277.

Amendments. The 2019 amendment deleted "regulation" following "rule" throughout the section.

15-76-304. Injunctions by the commission.

(a) Whenever it shall appear that any person is violating, or threatening to violate, any provision of this subchapter or any rule or order made thereunder by any act done in the operation of any well for the production of brine or the injection of effluent into an aquifer for disposal or injection purposes or by omitting any act required to be done thereunder, the Oil and Gas Commission, through its counsel or the Attorney General, may bring suit against that person in the circuit court in the county in which the well in question is located to restrain the person from continuing the violation or from carrying out the threat of violation. In that suit, the commission may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions as the facts may warrant, including, when appropriate, an injunction restraining any person from producing brine or injecting effluent into an aquifer.

(b) If the defendant cannot be personally served with summons in that county, personal jurisdiction of that defendant in that suit may be obtained by service made on any employee or agent of that defendant working on or about any well involved in that suit and by the commission mailing a copy of the complaint in the action to the defendant at the address of the defendant then recorded with the Director of Production and Conservation.

History. Acts 1979, No. 937, § 16; A.S.A. 1947, § 53-1316; Acts 2019, No. 315, § 1278.

Amendments. The 2019 amendment deleted "regulation" following "rule" in the first sentence of (a).

15-76-306. Authority of the commission.

(a) The Oil and Gas Commission shall have jurisdiction of and authority over all persons and property necessary to administer and enforce effectively the provisions of this subchapter.

(b) The commission shall have the authority and it shall be its duty to make inquiries it deems proper to determine whether or not waste over which it has jurisdiction exists or to determine whether the correlative rights of owners are being protected. In the exercise of this duty, the commission shall have the authority to:

(1) Make reasonable investigations and inspections;

(2) Examine properties, leases, papers, books, and records;

(3) Examine, check, test, and gauge brine wells, injection wells, and pipelines;

(4) Hold hearings;

(5) Require the keeping of records and the making of reports; and

(6) Take such action as may be reasonably necessary to enforce this subchapter.

(c) The commission shall have the authority to make, after hearing and notice as provided in this section, such reasonable rules and orders as may be necessary from time to time in the proper administration and enforcement of this subchapter, including rules or orders for the following purposes:

(1) To form brine production units and brine expansion units;

(2) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the escape of brine and effluent from one stratum to another, to prevent the pollution of fresh water supplies by brine and effluent, and to require reasonable financial assurance acceptable to the commission conditioned for the performance of the duty to plug each dry hole or abandoned well;

(3) To require the making of reports showing the location of brine wells utilized for production and of injection wells used for disposal and the filing of logs and drilling records for those wells;

(4) To require the return of the brine to the same formation from which it was produced unless the commission authorizes the disposal of effluent into one (1) or more other formations upon finding that neither underground damage nor waste results from the disposal;

(5) To prevent the drowning by brine and effluent of any stratum or part of a stratum capable of producing oil or gas in paying quantities;

(6) To prevent "blowouts", "caving", and "seepage" in the sense that conditions indicated by these terms are generally understood;

(7) To identify the ownership of all wells utilized for producing brine and of all injection wells and all pipelines, plants, ponds, structures, and storage facilities;

(8) To regulate the "shooting", perforating, and chemical treatment of wells;

(9) To regulate the introduction or injection of effluent and other substances into an aquifer;

(10)(A) To regulate the spacing of wells for the production of brine and injection wells for the introduction of effluent into an aquifer.

(B) However, the commission shall have no authority to allow wells or other installations on the surface of lands without the consent of the surface owner;

(11) To formulate rules for the proper transportation of brine from the producing wells to the plant and from the plant to the injection wells and for the maintenance and surveillance of the transportation facilities; and

(12) To prevent, so far as is practical, reasonably avoidable drainage between brine production units and brine expansion units.

(d)(1) The commission is authorized to assess each producer of brine a charge not to exceed fifty cents (50¢) on each one thousand (1,000)

barrels, each of which contains forty-two (42) United States gallons, of brine produced and saved or sold for purposes of the extraction of chemical substances therefrom.

(2) All moneys so collected shall be deposited into the Oil and Gas Commission Fund and used solely to pay the expenses and other costs of the commission.

(e) Before the commission implements the collection process of any increase in the millage assessments that may be authorized by law on each one thousand (1,000) barrels of brine produced and saved or sold for purposes of chemical extraction, the commission shall first seek review from the Legislative Council or the Joint Budget Committee.

History. Acts 1979, No. 937, § 3; A.S.A. 1947, § 53-1303; Acts 2001, No. 1188, §§ 2, 3; 2005, No. 1267, § 5; 2015, No. 89, § 2; 2019, No. 315, § 1279.

Amendments. The 2015 amendment added "and brine expansion units" at the end of (c)(1); substituted "from the disposal" for "therefrom" in (c)(4); substituted "of a stratum" for "thereof" in (c)(5); and added "and brine expansion units" at the end of (c)(12).

The 2019 amendment deleted "regulations" following "rules" twice in the introductory language of (c); and deleted "and regulations" following "rules" in (c)(11).

15-76-307. Procedure and rules of the commission.

(a) The Oil and Gas Commission shall prescribe its rules of order and procedure with respect to all hearings or proceedings hereunder in accordance with and as limited by the laws of this state applicable to hearings and proceedings before the commission under other acts of this state, including provisions of law regarding notice and hearing and provisions of law regarding the promulgation by the commission of rules and orders, including changes, renewals, or extensions thereof, and including emergency promulgations.

(b) No rule or order, including change, renewal, or extension thereof, shall, in the absence of an emergency, be made by the commission under the provisions of this subchapter except after a public hearing upon at least twenty (20) days' notice given in the manner and form as may be prescribed by the commission. Such public hearing shall be held at such time and place and in such manner as may be prescribed by the commission. Any person having any interest in the subject matter of the hearing shall be entitled to be heard.

(c) In the event an emergency is found to exist by the commission which, in its judgment, requires the making, changing, renewal, or extension of a rule or order without first having a hearing, such emergency rule or order shall have the same validity as if a hearing with respect to the rule or order had been held after due notice. The emergency rule or order permitted by this section shall remain in force no longer than sixty (60) days from its effective date, and, in any event, it shall expire when the rule or order made after due notice and hearing with respect to the subject matter of such emergency rule or order becomes effective.

(d) Should the commission elect to give notice by personal service, service may be made by any officer authorized to serve process or by any agent of the commission in the same manner as is provided by law for the service of summons in civil actions in the circuit courts of this state. Proof of the service by the agent shall be by the affidavit of the person making personal service.

(e) All rules and orders made by the commission shall be in writing and shall be entered in full by the Director of Production and Conservation in a book to be kept for such purpose by the commission. This book shall be a public record and be open to inspection at all times during reasonable office hours. A copy of such rule or order, certified by the director, shall be received in evidence in all courts of this state with the same effect as the original.

(f) Any interested person shall have the right to have the commission call a hearing for the purpose of taking action in respect to any matter within the jurisdiction of the commission by making a request therefor in writing and upon payment of a fee of two hundred fifty dollars ($250) or such sum as the commission may prescribe for each application for hearing or other proceeding before it under this subchapter. However, in no event shall the fee exceed five hundred dollars ($500). Upon the receipt of the request and fee, the commission shall promptly call a hearing thereon and, with all convenient speed and in any event within thirty (30) days of the date of the conclusion of the hearing, shall take action with regard to the subject matter thereof as it deems appropriate.

History. Acts 1979, No. 937, § 4; 1981, No. 264, § 1; A.S.A. 1947, § 53-1304; Acts 2019, No. 315, §§ 1280, 1281.

Amendments. The 2019 amendment, throughout the section, deleted "regulations" following "rules" and deleted "regulation" following "rule".

15-76-308. Formation of brine production units.

(a)(1) All producers, as defined in § 15-76-302, may make application to the Oil and Gas Commission for the establishment of brine production units and brine expansion units.

(2) Each application shall be scheduled for public hearing by the commission to be held no later than the next regularly scheduled hearing of the commission that will afford proper notice to be given.

(b) Unless a smaller area is requested by a petitioner and established by order of the commission, a brine production unit or a brine expansion unit established by order of the commission shall comprise no fewer than one thousand two hundred eighty (1,280) contiguous surface acres which are reasonably established to be underlain by a common aquifer.

(c)(1) A proposed brine production unit shall be approved by the commission if the existing or proposed plan of development is such as to drain efficiently the area of the unit and to protect the correlative rights of each owner therein.

(2) Each brine production unit as created by the commission under this subchapter shall constitute a brine production unit as long as a

producing well is located therein which is capable of producing brine in paying quantities.

(d)(1) A proposed brine expansion unit shall be approved by the commission as a stand-alone brine expansion unit if the existing or proposed plan of development establishes that the operation of an existing brine production unit can be expanded, enhanced, or made more efficient by the placement of one (1) or more production wells or brine injection wells in an expanded area immediately adjacent to the existing brine production unit, if the plan of development is such as to:

(A) Drain efficiently the area of the brine expansion unit; and

(B) Protect the correlative rights of each owner of the brine expansion unit.

(2) Each brine expansion unit as created by the commission under this subchapter shall constitute a unit as long as a producing well is located within:

(A) The brine expansion unit; or

(B) The adjacent brine production unit that is capable of producing brine in paying quantities.

History. Acts 1979, No. 937, § 5; A.S.A. 1947, § 53-1305; Acts 2015, No. 89, § 3.

Amendments. The 2015 amendment redesignated former (a) as present (a)(1) and (a)(2); added "and brine expansion units" at the end of (a)(1); in (b), added "Unless a smaller area is requested by a petitioner and established by order of the commission" and inserted "or a brine expansion unit"; redesignated former (c) as (c)(1) and (c)(2); inserted "brine production" preceding "unit" throughout (c); and added (d).

15-76-309. Petition for formation of a brine production unit or a brine expansion unit.

A petition for formation of a brine production unit or a brine expansion unit may be filed by a producer and shall contain the following:

(1) A description of the proposed brine production unit or brine expansion unit;

(2) A statement of the plan of development and operation of the brine production unit or brine expansion unit;

(3) All geological and engineering data necessary for the Oil and Gas Commission to be fully advised of the feasibility of the proposed plan;

(4) A statement detailing all costs and expenses chargeable to the proposed brine production unit or a brine expansion unit and a statement of all credits due against costs and expenses;

(5) A plat of each proposed brine production unit or brine expansion unit which indicates the tracts or parcels of land included in the plat and the location of each well then located within the proposed unit for the production of brine and the injection or disposal of effluent and the proposed location of each well that is proposed to be drilled for production and injection or disposal purposes;

(6) A list of owners within the unit, including the brine, interest, and last known address of each such owner; and

(7)(A) A statement that the petitioner has valid and subsisting leases or otherwise owns or controls the right to produce brine from not less than seventy-five percent (75%) of the entire area of the proposed brine production unit or brine expansion unit.

(B) The petitioner may not combine its leases or other rights to produce brine, relative to an adjacent brine production unit or brine expansion unit, with leases or other rights to produce brine necessary to achieve the seventy-five-percent lease requirement to form a separate brine production unit or brine expansion unit.

History. Acts 1979, No. 937, § 6; A.S.A. 1947, § 53-1306; Acts 2015, No. 89, § 4.

Amendments. The 2015 amendment added "or a brine expansion unit" in the section heading and added references to "brine expansion unit" throughout the section; deleted the former (a) designation at the beginning of the section; substituted "brine production unit or a brine expansion unit" for "unit" in (4); in (5), substituted "each proposed brine production unit or brine expansion unit" for "such proposed unit" and deleted "both" preceding "the production" and following "drilled for"; redesignated (7) as (7)(A) and (B); and, in (7)(B), substituted "adjacent brine production unit or brine expansion unit" for "existing unit" and "separate brine production unit or brine expansion unit" for "separate unit adjacent to the existing unit."

15-76-311. Contents of order.

The order requiring the operation of an area as a brine production unit or a brine expansion unit shall include:

(1) A description of the area included within such a brine production unit or a brine expansion unit;

(2) The surface area of each tract in the proposed unit;

(3) A provision for any credits and charges to be made in the adjustment among the owners in the unit for their allocated costs of the total investment in each well within the unit, pipelines, pumps, machinery, materials, and equipment required by the brine operation;

(4) A statement of the tangible and intangible expenses of the development and operation of the unit, including capital investments required in the development and operation of the brine production unit or the brine expansion unit, exclusive of the plant of the producer, to be charged to each owner in the unit in the same proportion as the owner's net material interest in brine production from the brine production unit or the brine expansion unit;

(5) The time and manner in which all owners in the unit who may desire to pay their share of the costs outlined in subdivision (4) of this section and participate in the operations of the unit may elect to do so;

(6)(A) The time at which the unit operation shall commence and the approval by the Oil and Gas Commission of the plan of development and operation of the unit, including, but not limited to, the number and proposed location of each well to be drilled within such unit for production and injection or disposal purposes and the approximate date upon which the proposed plan of development is to be commenced and completed.

(B) However, the commission shall have no authority to allow wells or other installations on the surface of lands without the consent of the surface owner;

(7) The name of the operator who shall drill, complete, or operate the well or wells within the unit; and

(8) Those additional provisions which are consistent with this subchapter and which the commission determines to be appropriate for the prevention of waste and the protection of correlative rights.

History. Acts 1979, No. 937, § 6; A.S.A. 1947, § 53-1306; Acts 2015, No. 89, § 5.

Amendments. The 2015 amendment inserted "or a brine expansion unit" in the introductory language; substituted "a brine production unit or a brine expansion unit" for "unit" in (1); in (3), substituted "each well within the unit" for "wells" and deleted "both for production and injection or disposal purposes" preceding "pipelines"; in (4), substituted "owner" for "tract" and substituted "in the same proportion as the owner's net material interest in brine production from the brine production unit or the brine expansion unit" for "in the same proportion that the tract shares in the production from such unit"; redesignated (6) as (6)(A) and (B); in (6)(A), inserted "proposed" and deleted "both" preceding "production"; and inserted "well or" in (7).

15-76-314. Participation by owners and royalties.

(a)(1) Upon the establishment of a unit, each owner of an unleased interest in the unit shall elect within sixty (60) days from the effective date of the order establishing the unit either to participate affirmatively in the operation of the unit and the production of brine or to transfer his or her interest in the brine to the participating producers thereof upon such terms as are set forth in this section.

(2) The election shall be made in writing to the operator as otherwise provided in the order establishing the unit, provided that, if no such written election is made within the sixty (60) days, the nonelecting owner shall be deemed to have transferred the nonelecting owner's interest to the operator as provided in this section.

(b) If an owner of an unleased interest elects to participate, the owner shall pay the owner's share of the costs set forth in § 15-76-311 and agree to pay the owner's share of the additional costs to be incurred in the drilling, equipping, and operating of each completed well within the unit.

(c) A participating owner in a brine production unit shall have the option, which shall be exercised at the time of the election to participate, either to:

(1) Take the participating owner's just and equitable share of the brine produced from the unit in kind and, if required by the Oil and Gas Commission, return it, after the participating owner's use, to disposal wells within the unit; or

(2) Receive the value of the participating owner's just and equitable share of the brine produced from the unit.

(d) A participating owner in a brine expansion unit containing one (1) or more production wells shall have the option, which shall be exercised at the time of the election to participate, either to:

(1) Take the participating owner's just and equitable share of brine produced from the brine expansion unit in kind and, if required by the commission, return it, after the participating owner's use, to injection wells within the brine expansion unit or injection wells within the adjacent brine production unit; or

(2) Receive the value of the participating owner's just and equitable share of the brine produced from the participating owner's unit.

(e) A participating owner in a brine expansion unit containing only one (1) or more injection wells shall have the option, which shall be exercised at the time of the election to participate, either to:

(1)(A) Take in kind the participating owner's just and equitable share of brine produced from a production well of his or her choice in the adjacent brine production unit.

(B) However, the commission may require the participating owner to return the brine, after the participating owner's use, to injection wells within the adjacent brine production unit or injection wells within the brine expansion unit; or

(2) Receive the equivalent value of the participating owner's just and equitable share of brine based on the average production of brine from all production wells in the adjacent brine production unit.

(f)(1) If, at any time or for any reason, an owner who has elected to participate defaults in any payments due and owing to the operator or by written notice manifests his or her intention to withdraw from active participation, the owner shall be deemed to have transferred all of his or her interests and rights in the unit to the operator for a reasonable consideration and on a reasonable basis which, in the absence of agreement between the parties, shall be determined by the commission, that, in addition to the other consideration granted to the operator, shall assess a penalty against the owner.

(2) The transfer may be either a permanent transfer or may be for a limited period pending recoupment by the operator out of the share of production attributable to the interest so transferred of an amount equal to those costs that would have been borne by the transferring party had he or she continued to participate in the operations conducted pursuant to the plan of development plus an additional sum to be fixed by the commission.

(g)(1) If an owner elects not to participate affirmatively in the development of the unit and the production of brine, he or she shall be deemed to have transferred his or her right to produce brine to the operator for the period of time for which the unit is operative for a reasonable consideration and on a reasonable basis which, in the absence of agreement between the parties, shall be determined by the commission.

(2) Any transfer, the terms of which are established by the commission, shall be either a permanent transfer or a transfer for a limited period pending recoupment by the operator, from the nonparticipating owner's just and equitable share of brine production, of an amount equal to those costs which the nonparticipating owner would have

borne had he or she elected to participate affirmatively in the development of the unit and the production of brine plus an additional amount assessed as a risk factor by the commission.

(h) Each owner of an unleased interest in a brine production unit shall be deemed to be the owner of a royalty interest equal to one-eighth (1/8) of the value of his or her just and equitable share of the brine produced from the unit, and the royalty interest shall not be chargeable with any of the costs of the development and operation of the unit.

(i) Each owner of an unleased interest in a brine expansion unit containing one (1) or more production wells shall be deemed to be the owner of a royalty interest equal to one-eighth (1/8) of the value of the owner's just and equitable share of the brine produced from the brine expansion unit, and the royalty interest shall not be chargeable with any of the costs of the development and operation of the brine expansion unit.

(j) Each owner of an unleased interest in a brine expansion unit containing only one (1) or more injection wells shall be deemed to be the owner of a royalty interest equal to one-eighth (1/8) of the value of the owner's just and equitable share of brine based on the average production of brine from all production wells in the adjacent brine production unit, and the royalty interest shall not be chargeable with any of the costs of the development and operation of the brine expansion unit.

(k) The provisions of this section shall not alter, modify, or otherwise amend the terms of any lease or agreement with respect to payments of royalty or in lieu of royalty in force and effect as of July 20, 1979, or which may be executed after that date.

History. Acts 1979, No. 937, § 7; A.S.A. 1947, § 53-1307; Acts 2015, No. 89, § 6.

Amendments. The 2015 amendment redesignated former (a) as present (a)(1) and (a)(2); in (a)(1), substituted "in the unit" for "therein," deleted "therefrom" following "production of brine," deleted "hereinafter" preceding "set forth," and added "in this section" to the end; in (a)(2), substituted "the nonelecting owner's" for "his or her" and substituted "in this section" for "herein"; in (b), substituted "the owner" for "he or she" and inserted "the owner's" preceding "share" twice; inserted "in a brine production unit" in the introductory language of (c); substituted "the participating owner's" for "his or her" throughout (c)(1) and (c)(2); inserted present (d) and (e) and redesignated the remaining subsections accordingly; in (g)(2), substituted "brine production" for "the brine produced from the unit" and deleted "therefrom" preceding "plus"; inserted "brine production" in (h); and inserted present (i) and (j) and redesignated former (f) as present (k).

15-76-315. Valuation of brine.

(a)(1)(A) The value of brine during any given year with respect to any unit established hereunder and for all purposes hereof shall be deemed to be the average price at which the operator of the unit has purchased or sold brine in Arkansas adjusted to reflect concentrations of ions, temperature, other relevant physical and chemical specifications, and delivery point.

(B) However, for purposes of this subchapter, the value shall not apply to any unit created hereunder until there shall have been

actual bona fide sales or purchases of brine by the operator in sufficient volumes and under such circumstances as would establish a bona fide market value for brine from that unit.

(2) In any action by any owner against the operator of the unit for an appropriate accounting for royalty, the burden of proof that the value as determined hereunder constitutes a fair and reasonable market value of brine produced from the unit shall be upon the operator of the unit.

(3) However, no valuation of brine or any other alternate method of computing royalty or in lieu of royalty shall ever result in compensation which is less than thirty-two dollars ($32.00) per acre per year, as increased or decreased annually based on changes in the Producer Price Index for processed goods for intermediate demand published by the United States Bureau of Labor Statistics, or its successor.

(4)(A) The adjustment will be made effective as of June 1 of each year and will remain effective for payments made from June 1 of that year until May 31 of the following year.

(B) The adjustment made each year will be based on the change in the index from December of the previous year relative to the base index of March, 1995.

(C) The formula to make the adjustment is as follows:

New in-lieu royalty payment = Base in-lieu royalty payment multiplied times A divided by B

Where:

(i) Base in-lieu royalty payment = $32.00 per acre;

(ii)*(a)* A = Index for the month of December prior to the year the adjustment is made, as increased or decreased annually.

(b) The index is the Producer Price Index for processed goods for intermediate demand as published by the United States Bureau of Labor Statistics, in Producer Price Indexes, Table 2 for intermediate demand by commodity type; and

(iii) B = The March 1995 Producer Price Index for Intermediate Materials, Supplies and Components as published by the United States Bureau of Labor Statistics, in Producer Price Indexes, Table 2 for selected commodity groupings.

(D)(i) The base price in lieu of royalty payment of thirty-two dollars ($32.00) per acre will remain effective from April 1, 1995, until May 31, 1996.

(ii) The first adjustment to the base payment will be made effective as of June 1, 1996, and will remain effective for the following year until May 31, 1997.

(iii) Successive adjustments will be made effective as of June 1 each year thereafter and shall remain in effect until May 31 of the following year.

(b)(1) In the event that, during a given year, an operator makes no sales or purchases of brine qualifying for use under subsection (a) of this section, the value of brine for that year for brine produced by the operator from a particular unit for all purposes hereof shall be determined by the Oil and Gas Commission by multiplying the number of

acres in that particular unit by eight (8) times the weighted average of lease compensation per acre or other in lieu of royalty payment agreed to between the producer thereof and the owners of brine interests in that unit, divided by the total production of brine in barrels for the given year.

(2)(A) If there are no sales or purchases of brine for two (2) or more consecutive years, the value of brine for each consecutive year after the first year in which there are no such sales shall be the value initially determined in subdivision (b)(1) of this section, increased or decreased annually using the Producer Price Index for processed goods for intermediate demand published by the United States Bureau of Labor Statistics, in Producer Price Indexes, Table 2 for intermediate demand by commodity type.

(B) The adjustment will be made prior to June 1 and the new price per acre will be effective on June 1 of each year using the value of the index for the previous December based on the change in the index from March 1995 to the previous December.

(C) The formula to make the adjustment is as set forth in subdivision (a)(4)(C) of this section.

(3) For purposes of calculating the value of the royalty interest under § 15-76-314(h), the value of brine as initially determined and as increased or decreased under this subsection shall not be less than the value of brine as initially determined under this subsection by utilizing an average annual lease compensation or payment in lieu of royalty equivalent to thirty-two dollars ($32.00) per acre.

(c)(1) In addition to any other amounts due and owing by the producer or producers of any unit to the owners therein, the producer or producers shall account separately and on a fair and equitable basis to each owner in the unit for all substances which are found by the commission to be profitably extracted from brine by a producer and which were not extracted by a producer on January 1, 1979.

(2) Whether or not any such substance is extracted profitably shall be determined by the commission on the basis of the value at the time of extraction, without interest, after deducting all costs of producing and recovering the same.

(3)(A) Except as provided in subdivision (c)(3)(B) of this section, the accounting by the producer shall be on a quarterly basis and shall be accompanied by payments due to royalty owners. The producer's responsibility for making royalty payments shall commence upon the occurrence of either of the two (2) following events:

(i) The date of filing of a petition for an accounting; or

(ii) The time of the profitable extraction of other substances.

(B) The accounting and corresponding royalty payments may be made on an annual basis for the aggregate of up to four (4) quarters of accumulated royalties if the aggregate amount owed to a royalty owner is one hundred dollars ($100) or less.

History. Acts 1979, No. 937, § 8; A.S.A. 1947, § 53-1308; Acts 1995, No. 1287, § 1; 2011, No. 169, § 1; 2015, No. 89, §§ 7-10.

Amendments. The 2015 amendment substituted "processed goods for intermediate demand" for "Intermediate Materials, Supplies, and Components" in (a)(3), (a)(4)(C)(ii)*(b)*, and (b)(2)(A); added "as increased or decreased annually" to the end of (a)(4)(C)(ii)*(a)*; substituted "intermediate demand by commodity type" for "selected commodity groupings" in (a)(4)(C)(ii)*(b)* and (b)(2)(A); substituted "in subdivision (b)(1) of this section" for "above" in (b)(2)(A); and substituted "15-76-314(h)" for "15-76-314(c)" in (b)(3).

15-76-316. Production from tracts within unit.

The portion of brine produced from a unit created under this subchapter and allocated to any particular tract shall be deemed, for all purposes, to have been actually produced from that tract, and operations for the production of brine from any part of the unit conducted pursuant to the order of the Oil and Gas Commission shall be deemed for all purposes to be operations for the production of brine from each separate tract in the integrated area of the unit.

History. Acts 1979, No. 937, § 9; A.S.A. 1947, § 53-1309; Acts 2015, No. 89, § 11.

Amendments. The 2015 amendment substituted "The portion of brine produced from a unit created under this subchapter" for "The portion of the brine produced from the unit."

15-76-317. Liability for unit expenses.

(a) The liability of each owner in a unit for the payment of unit expenses shall at all times be several and not joint or collective.

(b) In no event shall an owner in a unit be chargeable with, directly or indirectly, more than the amount charged to his or her interests in such unit pursuant to the order of the Oil and Gas Commission requiring the operation of the area as a brine production unit or brine expansion unit.

History. Acts 1979, No. 937, § 10; A.S.A. 1947, § 53-1310; Acts 2015, No. 89, § 12.

Amendments. The 2015 amendment added the (a) and (b) designations; and added "or brine expansion unit" to the end of (b).

15-76-319. Abandoned wells.

(a) Each abandoned well shall be plugged in the manner and within the time required by rules prescribed by the Oil and Gas Commission, and the owner of the well shall give notice, upon the form the commission may prescribe, of the owner's intention to abandon any well.

(b) No well shall be abandoned until notice has been given, and no fee shall be required to be paid with the notice.

History. Acts 1979, No. 937, § 12; 1981, No. 264, § 4; A.S.A. 1947, § 53-1312; Acts 2019, No. 315, § 1282.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a).

15-76-320. Antitrust.

The formation of a brine production unit or brine expansion unit as provided in this subchapter and the operation of the unit under order of the Oil and Gas Commission shall not be a violation of any statute of this state relating to trusts, monopolies, contracts, or combinations in restraint of trade.

History. Acts 1979, No. 937, § 13; A.S.A. 1947, § 53-1313; Acts 2015, No. 89, § 13.

Amendments. The 2015 amendment inserted "or brine expansion unit."

15-76-321. Judicial review.

(a) Any interested person adversely affected by any provisions of this subchapter or by any rule or order made by the Oil and Gas Commission hereunder, or by any act done or threatened hereunder, and who has exhausted his or her administrative remedy, may obtain court review and seek relief by a suit for injunction against the commission, as defendant, or the members thereof, by suit in the circuit court of the county in which the property involved is located.

(b) The suit shall have precedence over all other causes, proceedings, or suits on the docket of a different nature, and the attorney representing the commission may have the case set for trial after ten (10) days' notice to the plaintiff or his or her attorney.

(c) In the trial, the burden of proof shall be upon the plaintiff, and all pertinent evidence with respect to the validity and reasonableness of the order of the commission complained of shall be admissible.

(d) The statute, provision of this subchapter, or rule or order complained of shall be taken as prima facie valid, and the presumption shall not be overcome, in connection with any application for injunctive relief, including a temporary restraining order, by a verified bill or affidavit of, or in behalf of, the applicant.

(e) The right of review accorded by this section shall be inclusive of all other remedies, but the right of appeal shall lie as hereinafter set forth.

History. Acts 1979, No. 937, § 14; A.S.A. 1947, § 53-1314; Acts 2019, No. 315, §§ 1283, 1284.

Amendments. The 2019 amendment deleted "regulation" following "rule" in (a) and (d).

15-76-322. Appellate procedure.

In all proceedings brought under authority of this subchapter or of any rule or order issued hereunder, and in all proceedings instituted for the purpose of contesting the validity of any provisions of this subchapter or of any rule or order issued hereunder, appeals may be taken in accordance with the general laws of the State of Arkansas relating to appeals. However, in all appeals from judgments or decrees in suits to contest the validity of any provision of this subchapter or any rule or order of the Oil and Gas Commission hereunder, the appeals, when

docketed in the Supreme Court, shall take precedence over other cases on the docket of the Supreme Court and may be advanced as the Supreme Court may order and direct.

History. Acts 1979, No. 937, § 17; A.S.A. 1947, § 53-1317; Acts 2019, No. 315, § 1285.

Amendments. The 2019 amendment deleted "regulation" following "rule" throughout the section.

15-76-324. Division of Environmental Quality.

(a) Nothing contained in this subchapter shall affect the jurisdiction of the Division of Environmental Quality over owners or producers of brine or the processing and disposal of brine with respect to water or air pollution control or other matters within its jurisdiction or the requirement that owners, producers, and processors apply for and obtain a permit from the division as provided by the Arkansas Water and Air Pollution Control Act, as amended, § 8-4-101 et seq.

(b) Nothing contained in this subchapter confers upon the Arkansas Pollution Control and Ecology Commission any authority or jurisdiction conferred by law upon the division or shall be deemed to amend the Arkansas Water and Air Pollution Control Act, as amended, § 8-4-101 et seq.

History. Acts 1979, No. 937, § 21; A.S.A. 1947, § 53-1320; Acts 1999, No. 1164, § 155; 2019, No. 910, § 3183.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in the section heading and in (a); and substituted "division" for "department" in (a) and (b).